

# **SUPPLEMENT TO KAPPLER'S INDIAN AFFAIRS: LAWS AND TREATIES**

**Compiled Federal Regulations  
Relating To Indians**



**UNITED STATES DEPARTMENT OF THE INTERIOR**

**Kent Frizzell, Acting Secretary**

# FOREWORD

The original and revised editions of Senate Document 319 of the 58th Congress, entitled *Indian Affairs, Laws and Treaties* (popularly called "Kapplers") did not include federal regulations. Indeed, federal regulations were not available in the present codified form until after 1935 when Congress directed a compilation of all documents of "general applicability and legal effect" relied upon by an agency as authority or invoked or used by it in the discharge of any of its functions or activities. See Section 11, Act of July 26, 1935, 49 Stat. 500, 503, as amended and codified, 44 U.S.C. § 1510.

Since the Interior Department has had principal responsibility in the field of Indian Affairs, Title 25 CFR comprises the main body of regulations relating to Indian Affairs. This Department, however, no longer has the exclusive "management of all Indian Affairs and of all matters arising out of Indian relations". The modern trend has been to make programs and services of other agencies available to Indians. Consequently, other agencies have promulgated regulations relating specifically to Indians; those regulations are found in Titles of CFR other than Title 25.

Congress by the 1968 Indian Civil Rights Act directed, *inter alia*, that this edition include "federal regulations relating to Indian Affairs".

A decision to carry out that directive by a supplement (rather than by including these regulations in the main volumes of Kapplers) and by including in the compilation only regulations other than those in Title 25 CFR is founded on conclusions (a) that regulations, susceptible as they are to frequent change, should be presented in a form more easily updated and (b) that little purpose would be served by republishing the main body of regulations contained in Title 25, which are already easily accessible.

The concept that knowledge is an initial step in protecting rights is, of course, not new but is appropriately applied here to the complex regulations for the implementation of laws applicable to Indians. This compilation should, as intended by Congress, assist Indians and those employed on their behalf in more fully understanding and applying rules which relate to the exercise of their rights.

A handwritten signature in black ink, reading "Kent Frizzell". The signature is written in a cursive, flowing style with a large initial 'K'.

KENT FRIZZELL, *Solicitor*  
Department of the Interior

# INTRODUCTION

A word of caution about use of this compilation: it is not the official Code of Federal Regulations. Users researching regulations should, for reasons hereinafter explained, consult the appropriate Title of the official Code of Federal Regulations. A compilation of regulations such as this falls short of the original code in several important respects. First, the Code of Federal Regulations has been designated by Congress (44 U.S.C. § 1510(e)) as “prima facie evidence” of the text of the regulations as promulgated—this compilation has not been so designated. Second, agencies in the exercise of their authority can, and many times do, amend their regulations or promulgate new regulations. (The compilation is based on the 1973 CFR) Such amendments or new regulations would first appear in the daily issues of the *Federal Register* and subsequently in one of the Titles of CFR which are revised annually. See 1 CFR v. Moreover, the regulations contained in this compilation are not always the entire regulation but often are only pertinent excerpts of regulations.

Users are, therefore, advised to consult the original Code of Federal Regulations when it is important that complete up-to-date regulations be applied. This is only a convenient aid in finding those regulations.

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## TITLE 5—ADMINISTRATIVE PERSONNEL

### CHAPTER 1—CIVIL SERVICE COMMISSION

\* \* \* \* \*

#### PART 213—EXCEPTED SERVICE

#### SUBPART C—EXCEPTED SCHEDULES

##### SCHEDULE A

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is not practicable to examine.

(a) The positions enumerated in §§ 213.3102 to 213.3199 are positions other than those of a confidential or policy-determining character for which it is not practicable to examine and which are excepted from the competitive service and constitute Schedule A.

\* \* \* \* \*

§ 213.3112 Department of the Interior.

\* \* \* \* \*

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to the providing of services to Indians when filled by the appointment of Indians who are one-fourth or more Indian blood.

\* \* \* \* \*

(b) *Bureau of Indian Affairs.* (1) Housekeeper positions at a gross salary not in excess of the entrance rate of grade GS-4 or its equivalent when, because of isolation or lack of quarters, appointment through competitive examination is, in the opinion of the Commission, impracticable.

(2) Subject to prior approval of the Commission, assistants in Alaska native schools (not including teachers and instructors) at a salary rate not in excess of that of GS-4 or its equivalent where the schools are in isolated or remote areas or lack suitable quarters.

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

\* \* \* \* \*

§ 213.3116 Department of Health, Education, and Welfare.

\* \* \* \* \*

(b) *Public Health Service.*

\* \* \* \* \*

(8) Positions directly and primarily related to the providing of services to Indians when filled by the appointment of Indians who are one-fourth or more Indian blood.

\* \* \* \* \*

(d) *Social Security Administration.*

(1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

\* \* \* \* \*

§ 213.3199 Temporary boards and commissions.

(a)–(f) [Reserved]

(g) *The National Council on Indian Opportunity.* (1) Positions at GS-15 and below on the staff of the Council when filled by Indians who are of one-fourth or more Indian blood.

\* \* \* \* \*

##### SCHEDULE B

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

The positions enumerated in §§ 213.3202 to 213.3299 are positions other than those of a confidential or policy-deter-

mining character for which it is not practicable to hold a competitive examination and which are excepted from the competitive service and constitute Schedule B. Appointments to these positions are subject to such noncompetitive examination as may be prescribed by the Commission.

\* \* \* \* \*

§ 213.3212 Department of the Interior.

(a) Any competitive position at an Indian school when filled by the spouse of a competitive employee of the school, when because of isolation or lack of quarters, the Commission deems appointment through competitive examination impracticable.

\* \* \* \* \*

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining character.

The positions enumerated in §§213.3302 to 213.3399 are positions of a confidential or policy-determining character which are excepted from the competitive service, to which appointments may be made without examination by the Commission and which constitute Schedule C.

\* \* \* \* \*

§ 213.3312 Department of the Interior.

\* \* \* \* \*

(j) *Bureau of Indian Affairs.* (1) One Assistant to the Commissioner.

\* \* \* \* \*

§ 213.3345 Indian Claims Commission.

(a) One Private Secretary to each Commissioner.

## TITLE 7—AGRICULTURE

\* \* \* \* \*

### CHAPTER II—FOOD AND NUTRITION SERVICE

#### SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES— FOOD DISTRIBUTION

\* \* \* \* \*

##### PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDIC- TION

\* \* \* \* \*

###### § 250.3 Definitions.

\* \* \* \* \*

(s) "Welfare agencies" means public (Federal, State or local) or private agencies offering assistance on a charitable or welfare basis to needy persons who are not residents of an institution, and to Tribal Councils designated by the Bureau of Indian Affairs.

\* \* \* \* \*

###### § 250.6 Obligations of distributing agencies.

\* \* \* \* \*

(e) *Household distribution.* Distributing agencies, prior to making distribution to welfare agencies or households, shall submit a plan of operation for approval by the appropriate Food and Nutrition Service Regional Office. Such plan shall incorporate the procedures and methods to be used in certifying households as in need of food assistance; in making distribution to households; and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of a distributing agency shall be made without prior approval of FNS,

and FNS may require amendment of any plan as a condition of continuing approval. Distributing agencies shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the State plan of operation. As a minimum, the plan shall include the following:

\* \* \* \* \*

(4) Assurance that Tribal Councils serving Indian households on reservations have been designated by the Bureau of Indian Affairs to so act.

\* \* \* \* \*

###### § 250.15 Operating expense funds for distributing agencies.

\* \* \* \* \*

(c) *Apportionment of funds.* From the funds available for the purpose of this section for any fiscal year, the Department shall first reserve funds in an amount sufficient to meet the requirements of subparagraph (3) of this paragraph and then shall apportion the remaining funds, as follows:

(1) Twelve and one-half percent of the remaining available funds shall be apportioned among the distributing agencies for Guam, Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the governing bodies of Indian reservations which are also distributing agencies. The proportion of funds apportioned to each of these distributing agencies shall be such amount as FNS determines is necessary to effectuate the purpose of this section.

\* \* \* \* \*

## SUBCHAPTER C—FOOD STAMP PROGRAM

### PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

#### § 271.3 Household eligibility.

(4) *Resource definition and standards*—(i) *Maximum allowable resources*. The maximum allowable resources—including both liquid and nonliquid assets—of all members of each household shall not exceed \$1,500 for each household, except, for households of two or more

persons with a member or members age 60 or over whose resources are not excluded under subdivision (iii) (c) of this subparagraph, the resources shall not exceed \$3,000.

(iii) *Exclusions from resources*. In determining the resources of a household, there shall be excluded:

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

## CHAPTER XVIII—FARMERS HOME ADMINISTRATION

### PART 1890 — NONDISCRIMINATION BY RECIPIENTS OF FINANCIAL ASSISTANCE

#### § 1890.1 Purpose.

This part supplements Subpart A of Part 1821, Subparts C, D, E, F, G, and I of Part 1822, Subparts A, B, C, D, E, F, and H of Part 1823 and Subpart A of Part 1831 of this chapter. The purpose of this part is to implement the regulations of the Department of Agriculture issued pursuant to title VI of the Civil Rights Act of 1964 as they relate to the activities of the Farmers Home Administration (FHA). Title VI provides that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### PART 1890f—LOANS TO INDIANS

Sec.

1890f.1 General.

1890f.2 Loan making.

**AUTHORITY:** The provisions of this Part 1890f issued under sec. 510, 63 Stat. 437; 42 U.S.C. 1480, sec. 339, 75 Stat. 318; 7 U.S.C. 1989, 29 F.R. 16210, 32 F.R. 6650, 33 F.R. 9677.

**SOURCE:** The provisions of this Part 1890f appear at 35 F.R. 13980, Sept. 3, 1970, unless otherwise noted.

#### § 1890f.1 General.

This part supplements Subparts A and B of Part 1821, Subparts A, B, C, D, E,

F, and G of Part 1822, Subpart A of Part 1831, and Subpart A of Part 1832, all of this chapter. This part outlines the additional policies and procedures to be followed in making and servicing Farmers Home Administration (FHA) loans to Indians secured by trust or restricted land is the States of Florida, Michigan, Mississippi, North Carolina, Wisconsin, and all States west of the Mississippi River except Arkansas, Missouri, and Texas, and in selected counties of these states.

#### § 1890f.2 Loan making.

The following is a joint statement by the Department of Agriculture and the Department of the Interior. This statement was prepared by representatives of the two Departments to make it possible to expedite and simplify the processing of FHA loans to eligible Indians.

(a)—

JOINT STATEMENT BY DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF THE INTERIOR

Loans by Farmers Home Administration to Indians, and to Permittees and Lessees or Indian trust of restricted lands.

Whereas, the Secretary of Agriculture and the Secretary of the Interior executed a memorandum of understanding on August 27, 1957, and July 26, 1957, respectively, the purpose of which was to outline the general procedures to be followed by the Farmers Home Administration (FHA) and the Bureau of Indian Affairs (BIA) on loans by the FHA to Indians, and

Whereas, the working relationships between FHA and BIA have now been well established and are understood by field personnel, it is mutually agreed that the detail provisions of said memorandum are no longer necessary; and

Whereas, we deem it advisable that Indian applicants for FHA financing should be treated in the same manner as non-Indians:

Therefore, it is agreed that said memorandum of understanding is hereby nullified and henceforth applications from Indians for loans will be handled by FHA in the same manner as applications from non-Indians, except in those instances where Indian trust or restricted property is involved. When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FHA, the BIA will assist FHA to the fullest extent necessary in accordance with the statutory requirements affecting such property. This will include furnishing advice requested by FHA as to conditions under which BIA will approve a lien on the property. It is further agreed that upon request by FHA, BIA will furnish relevant information which it has with respect to the property and the individual loan applicant including that on his reputation for industry and payment of debts.

(1) It is the policy to accept and process applications from Indians in the same manner as non-Indians except in those instances where Indian trust or restricted property is to serve as security.

(2) FHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restriction against alienation subject to statutes under which they may, with the approval of the Secretary of the Interior, give mortgages on their land which are valid and enforceable. These statutes include, but may not be limited to, the Act of March 29, 1956 (70 Stat. 62, 63).

(i) An Indian applicant who owns land in a trust or restricted status and applies for a loan to buy land to enlarge a farm will not be required to convert the trust or restricted land he owns to an unrestricted status.

(ii) Land in trust or restricted status purchased with FHA loan funds may be acquired and held by the Indian in trust or restricted status.

(3) When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FHA, the local representatives of the Bureau of Indian Affairs will furnish requested advice and information with respect to the property and each applicant. The request will indicate the specific information needed.

(4) The FHA State director should arrange with the area director or other appropriate local official of the Bureau of Indian Affairs as to the manner in which the information will be requested and furnished. The State director will issue instructions to prescribe the actions to be taken by FHA personnel to implement the making of loans under such conditions.

(b) *Loan servicing.* Loans made to Indians will be serviced in accordance with the applicable procedures contained in this chapter.

## TITLE 8—ALIENS AND NATIONALITY

### CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE

#### PART 289—AMERICAN INDIANS BORN IN CANADA

Sec.

289.1 Definition.

289.2 Lawful admission for permanent residence.

289.3 Recording the entry of certain American Indians born in Canada.

**AUTHORITY:** The provisions of this Part 289 issued under secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

**SOURCE:** The provisions of this Part 289 appear at 29 F.R. 11494, Aug. 11, 1964.

##### § 289.1 Definition.

The term "American Indian born in Canada" as used in section 289 of the Act includes only persons possessing 50 per centum or more of the blood of the American Indian race. It does not include a person who is the spouse or child of such an Indian or a person whose membership in an Indian tribe or family is created by adoption, unless such person possess at least 50 per centum or more of such blood.

##### § 289.2 Lawful admission for permanent residence.

Any American Indian born in Canada who at the time of entry was entitled to the exemption provided for such person

by the Act of April 2, 1928 (45 Stat. 401), or section 289 of the Act, and has maintained residence in the United States since his entry, shall be regarded as having been lawfully admitted for permanent residence. A person who does not possess 50 per centum of the blood of the American Indian race, but who entered the United States prior to December 24, 1952, under the exemption provided by the Act of April 2, 1928, and has maintained his residence in the United States since such entry shall also be regarded as having been lawfully admitted for permanent residence. In the absence of a Service record of arrival in the United States, the record of registration under the Alien Registration Act, of 1940 (54 Stat. 670; 8 U.S.C. 451), or section 262 of the Act, or other satisfactory evidence may be accepted to establish the date of entry.

##### § 289.3 Recording the entry of certain American Indians born in Canada.

The lawful admission for permanent residence of an American Indian born in Canada shall be recorded on Form I-181.

[33 F.R. 7485, May 21, 1968]

## **TITLE 23—HIGHWAYS**

Regulations concerning construction and maintenance of roads on Indian lands,  
Bureau of Indian Affairs, Department of the Interior: 25 CFR Part 162.

## TITLE 28—JUDICIAL ADMINISTRATION

### CHAPTER I—DEPARTMENT OF JUSTICE

#### PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

\* \* \* \* \*

##### Subpart J—Civil Rights Division

0.50 General functions.

\* \* \* \* \*

##### Subpart M—Land and Natural Resources Division

Sec.

0.65 General functions.

\* \* \* \* \*

##### Subpart J—Civil Rights Division

§ 0.50 General functions.

Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Civil Rights Division:

(a) Enforcement of all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment, housing, and the constitutional and civil rights of Indians arising under 25 U.S.C. 1301 et seq. and authorization of litigation in such enforcement, including criminal prosecutions and civil actions and proceedings on behalf of the Government, and designation of attorneys to present evidence to grand juries; and appellate proceedings in all such cases. Notwithstanding the provisions of the foregoing sentence, the responsibility for the enforcement of the following-described provisions of the United States Code is assigned to the Assistant Attorney General in charge of the Criminal Division—

(1) Sections 591 through 593 and sections 595 through 612 of title 18, United States Code, relating to elections and political activities;

(2) Sections 241, 242, and 594 of title 18, and sections 1973i and 1973j of title 42, United States Code, insofar as they relate to voting and election matters not

involving discrimination or intimidation on grounds of race or color, and section 245(b) (1) of title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) Section 245(b) (3) of title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

(4) Sections 241 through 256 of title 2, United States Code (Federal Corrupt Practices Act).

(b) Requesting and reviewing investigations arising from reports or complaints of public officials or private citizens with respect to matters affecting civil rights.

(c) Conferring with individuals and groups who call upon the Department in connection with civil rights matters, advising such individuals and groups thereon, and initiating action appropriate thereto.

(d) Coordination within the Department of Justice of all matters affecting civil rights.

(e) Consultation with and assistance to other Federal departments and agencies and State and local agencies on matters affecting civil rights.

(f) Research on civil rights matters, and the making of recommendations to the Attorney General as to proposed policies and legislation relating thereto.

(g) Representation of Federal officials in private litigation arising under 42 U.S.C. 2000d or under other statutes pertaining to civil rights.

[Order 423-60, 34 F.R. 20388, Dec. 31, 1969, as amended by Order 484-72, 37 F.R. 11317, June 7, 1972; Order 540-73, 38 F.R. 26910, Sept. 27, 1973; Order No. 543-73, 38 F.R. 29584, Oct. 23, 1973]

\* \* \* \* \*

##### Subpart M—Land and Natural Resources Division

§ 0.65 General functions.

Subject to the general supervision of the Attorney General, and under the di-



rection of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Land and Natural Resources Division:

(a) Civil suits and matters in Federal and State courts (and administrative tribunals), by or against the United States, its agencies, officers, or contractors, or in which the United States has an interest, whether for specific or monetary relief, and also nonlitigation matters, relating to

(1) The public domain lands and the outer continental shelf of the United States,

(2) Other lands and interests in real property owned, leased, or otherwise claimed or controlled, or allegedly impaired or taken, by the United States, its agencies, officers, or contractors, including the acquisition of such lands by condemnation proceedings or otherwise,

(3) The water and air resources controlled or used by the United States, its agencies, officers, or contractors, without regard to whether the same are in or related to the lands enumerated in subparagraphs (1) and (2) of this paragraph, and

(4) The other natural resources in or related to such lands, water, and air, except that the following matters which would otherwise be included in such assignment are excluded therefrom:

(i) Suits and matters relating to the use or obstruction of navigable waters or the navigable capacity of such waters by ships or shipping thereon, the same being specifically assigned to the Civil Division;

(ii) Suits and matters involving tort claims against the United States under the Federal Tort Claims Act and special acts of Congress, the same being specifi-

cally assigned to the Civil Division;

(iii) Suits and matters involving the foreclosure of mortgages and other liens held by the United States, the same being specifically assigned to the Civil and Tax Divisions according to the nature of the lien involved;

(iv) Suits arising under 28 U.S.C. 2410 to quiet title or to foreclose a mortgage or other lien, the same being specifically assigned to the Civil and Tax Divisions according to the nature of the lien held by the United States, and all other actions arising under 28 U.S.C. 2410 involving federal tax liens held by the United States, which are specifically assigned to the Tax Division;

(v) Matters involving the immunity of the Federal Government from State and local taxation specifically delegated to the Tax Division by § 0.71.

(b) Representation of the interests of the United States in all civil litigation in Federal and State courts, and before the Indian Claims Commission, pertaining to Indians, Indian tribes, and Indian affairs, and matters relating to restricted Indian property, real or personal, and the treaty rights of restricted Indians (except matters involving the constitutional and civil rights of Indians assigned to the Civil Rights Division by Subpart J of this part).

(c) Rendering opinions as to the validity of title to all lands acquired by the United States, except as otherwise specified by statute.

(d) Criminal suits and matters involving air and water pollution.

(e) Criminal suits and matters involving obstruction to navigation, and illegal dredging or filling (33 U.S.C. 403).

[Order No. 423-69, 31 F.R. 20388, Dec. 31, 1969, as amended by Order No. 457-74, 36 F.R. 10362, June 4, 1971; Order 465-72, 37 FR 11724, June 13, 1972; Order 540-74, 33 FR 27910, Sept. 27, 1973; Order No. 543-73, 38 FR 29385, Oct. 26, 1973]

# TITLE 30—MINERAL RESOURCES

## CHAPTER II—GEOLOGICAL SURVEY

### PART 221—OIL AND GAS OPERATING REGULATIONS <sup>1</sup>

#### INTRODUCTION: DEFINITIONS

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221.4 General functions.  
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**AUTHORITY:** The provisions of this Part 221 issued under sec. 3, 26 Stat. 795, secs. 18, 14, 27, 28, 32, 41 Stat. 426, 442, as amended, 448, as amended, 449, as amended, 450 sec. 7, 42 Stat. 1450, 43 Stat. 244, sec. 6, 46 Stat. 374, sec. 39, 47 Stat. 793, as amended, sec. 40, 48 Stat. 977, sec. 3, 49 Stat. 679, 50 Stat. 842, as amended, sec. 4, 52, Stat. 348, sec. 10, 61 Stat. 915; 25 U.S.C. 397, 356, 30 U.S.C. 223, 184, 185, 189, 230, 25 U.S.C. 398, 30 U.S.C. 306, 209, 229a, 236a, 2211. 25 U.S.C. 396d, 30 U.S.C. 359.

**SOURCE:** The provisions of this Part 221 appear at 7 F.R. 4132, June 2, 1942, unless otherwise noted.

## INTRODUCTION; DEFINITIONS

## § 221.1 Introduction.

The regulations in this part will govern the development and production of deposits of oil, gas, and casing-head or natural gasoline, including propane, butane and other hydrocarbons, and fluids, and lands containing such deposits owned or controlled by the United States, and under jurisdiction of the Secretary by law or administrative arrangement. The regulations in this part shall be administered under the Director of the Geological Survey, except that as to lands within naval petroleum reserves they shall be administered under such official as the Secretary of the Navy shall designate.

## § 221.2 Definitions.

The following terms as used in the regulations in this part shall have the meanings here given:

(a) *Secretary*. The Secretary of the Interior, except where lands in naval petroleum reserves are involved, and in that case the Secretary of the Navy.

(b) *Director*.—The Director of the Geological Survey, Washington, D.C., having direction of the enforcement of the regulations in this part.

(c) *Supervisor*.—The Area Oil and Gas Supervisor, Conservation Division of the Geological Survey; a representative of the Secretary, subject to the direction and supervisory authority of the Director, the Chief, Conservation Division, Geological Survey, and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, authorized and empowered to supervise and direct oil and gas operations and to perform other duties prescribed in the regulations in this part, or any subordinate acting under his direction.

(d) *Officer in charge*. The supervisor or such other officer as the Secretary may designate to supervise technical operations for the development and production of oil and gas on restricted Indian lands. Over such lands the officer so designated shall exercise the authority and power and perform the duties of supervisor as provided in the regulations in this part.

(e) *Superintendent*. The superintendent of an Indian agency, or other officer authorized to act in matters of record,

law, and collections with respect to oil or gas leases for restricted Indian lands.

(f) *Lease*. An agreement which in consideration of covenants to be observed, grants to a lessee the exclusive right and privilege of developing and producing oil or gas deposits owned by the lessor subject to the regulations in this part.

(g) *Leased lands, leasehold*. Lands and deposits covered by a lease as defined in paragraph (f) of this section.

(h) *Producing lease*. A producing lease is one including land on which there is a producible well, either active or shut in, or land determined by the supervisor to be subject to subsurface drainage.

(i) *Lessor*. The party to a lease who holds title to the leased lands.

(j) *Lessee*. The party authorized by a lease, or approved assignment thereof, to develop and produce oil or gas on the leased lands in accordance with the regulations in this part, including all parties holding such authority by or through him.

(k) *Register*. A representative of the Bureau of Land Management in charge of a District Land Office.

(l) *Operator*. The individual, partnership, firm, or corporation that has control or management of operations on the leased land or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(m) *Designated operator or agent*. The local representative of the lessee or of the operator; may be the holder of operating rights under an approved operating agreement.

(n) *Waste of oil or gas*. Waste of oil or gas, in addition to its ordinary meaning, shall mean the physical waste of oil or gas, and waste, loss, or dissipation of reservoir energy existent in any deposit containing oil or gas and necessary or useful in obtaining the maximum recovery from such deposit.

(1) Physical waste of oil or gas shall be deemed to include the loss or destruction of oil or gas after recovery thereof such as to prevent proper utilization and beneficial use thereof, and the loss of oil or gas prior to recovery thereof by isolation or entrapment, by migration, by premature release of natural gas from solution in oil, or in any other manner

such as to render impracticable the recovery of such oil or gas.

(2) Waste of reservoir energy shall be deemed to include the failure reasonably to maintain such energy by artificial means and also the dissipation of gas energy, hydrostatic energy, or other natural reservoir energy, at any time at a rate or in a manner which would constitute improvident use of the energy available or result in loss thereof without reasonably adequate recovery of oil.

(o) *Gas*.<sup>1</sup> Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(p) *Oil, crude oil*. Any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

[7 FR 4132, June 2, 1942, as amended by 38 FR 10001, Apr. 23, 1973]

#### JURISDICTION AND FUNCTIONS OF SUPERVISOR

##### § 221.3 Jurisdiction.

Subject to the supervisory authority of the Secretary and the Director, drilling and producing operations, handling and gaging of oil, and the measurement of gas or other products, determination of royalty liability, receipt and delivery to those entitled thereto of royalty accruing to the lessor and paid in amount of production, determination of amount and manner of payment of damages assessed under authority of the regulations in this part for defaults or non-compliance with duties by the lessee and, in general, all operations subject to the regulations in this part are under the jurisdiction of the supervisor for any area as delineated by the Director. As to producing leases of Indian lands, the officer in charge, and as to lands within naval petroleum reserves, the supervisor shall determine rental liability, record rentals, royalties, and other payments, and maintain lease accounts. Upon request, the supervisor will advise any person concerning the regulations in this part, and will furnish technical information and advice relative to oil and gas development and operation on lands

subject hereto. In the exercise of his jurisdiction, the supervisor shall be subject to the direction and supervisory authority of the Chief, Conservation Division, Geological Survey and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, each of whom may exercise the jurisdiction of the supervisor.

[38 F.R. 10001, Apr. 23, 1973]

##### § 221.4 General functions.

The supervisor is hereby authorized to require compliance with lease terms, with the regulations in this part, and all other applicable regulations, and with applicable law to the end that all operations shall conform to the best practice and shall be conducted in such manner as to protect the deposits of the leased lands and result in the maximum ultimate recovery of oil, gas, or other products with minimum waste. Inasmuch as conditions in one area may vary widely from conditions in another area, the regulations in this part are general, and detailed procedure hereunder in any particular area is subject to the judgment and discretion of the supervisor, and to any real plan of development that may be adopted pursuant to law. The supervisor may require satisfactory evidence that a lease is in good standing, that the lessee or operator is authorized to conduct operations, and that an acceptable bond has been filed before permitting operations on the leased land.

##### § 221.5 Supervision of operations.

The supervisor shall inspect and supervise operations under the regulations in this part; prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, and injury to life or property; and shall issue instructions necessary, in his judgment, to accomplish these purposes.

##### § 221.6 Reports and recommendations.

The supervisor shall make reports to his superior administrative officer as to the general condition of leased lands, and the manner in which operations are being conducted and departmental orders are being obeyed, and submit from time to time information and recommendations for safeguarding and protecting surface

property and underlying mineral-bearing formations.

**§ 221.7 Reports and notices.**

The supervisor shall prescribe the manner and form in which records of all operations, reports, and notices shall be made by lessees and operators.

**§ 221.8 Required samples, tests, and surveys.**

When deemed necessary or advisable, the supervisor is authorized to require that adequate samples be taken and tests or surveys be made in acceptable manner without cost to the lessor to determine the identity and character of formations; the presence or waste of oil, gas, water, or reservoir energy; the quantity and quality of oil, gas, or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; and whether operations are being conducted with due regard to the interests of the lessor.

**§ 221.9 Damage to mineral deposits, directional drilling, lease obligations, well abandonment.**

The supervisor shall require correction, in a manner to be prescribed, or approved by him, of any condition which is causing or is likely to cause damage to any formation containing oil, gas, or water or to coal measures or other mineral deposits, or which is dangerous to life or property or wasteful of oil, gas, or water; require substantially vertical drilling when necessary to protect interests in other properties; demand drilling in accordance with the terms of the lease or of the regulations in this part; and require plugging and abandonment of any well or wells no longer used or useful in accordance with such plan as may be approved or prescribed by him, and, upon failure to secure compliance with such requirement, perform the work at the expense of the lessee, expending available public funds, and submit such report as may be needed to furnish a basis for appropriate action to obtain reimbursement.

**§ 221.10 Well potentials and permissible flow.**

The supervisor is authorized to fix the percentage of the potential capacity of any oil or gas well that may be utilized

or the permissible production of any such well when, in his opinion, such action is necessary to protect the interests of the lessor, or to conform with proration rules established for the field; and to specify the time and method for determining the potential capacity of such wells.

**§ 221.11 Well-spacing and well-casing; technical assistance to lessees.**

The supervisor shall approve well-spacing and well-casing programs determined to be necessary for the proper development of the leases and assist and advise lessees in the planning and conduct of tests and experiments for the purpose of increasing the efficiency of operations.

**§ 221.12 Production records; rentals, royalties, and payments; drainage and waste.**

The supervisor shall compile and maintain records of production and prices and determine royalties accrued, estimate drainage and compute losses to the lessor resulting therefrom, and estimate the amount and value of oil, gas, and other products wasted. The supervisor shall render monthly to the lessee, or his agent, statements, showing the amount of oil, gas, casing-head or natural gasoline, propane, butane, or other hydrocarbons produced or sold and the amount or value of production accruing to the lessor as royalty from each lease; the loss by drainage or waste and the compensation due to the lessor as reimbursement; and, except as to any disposal of gas that shall have been determined by the Secretary of the Interior to be sanctioned by the laws of the United States and of the State in which it occurs, the amount and full value, computed at a price of not less than 5 cents per 1,000 cubic feet, of all gas wasted by blowing, release, escape into the air, or otherwise. Also, as to producing leases of Indian lands and lands within naval petroleum reserves, the supervisor shall determine rental liability, record rental, royalty, and other payments, and maintain lease accounts.

**§ 221.13 Division orders, run tickets, sales agreement or contracts.**

The supervisor is authorized to ap-

prove, subject to such conditions as he shall prescribe, division orders or temporary purchase agreements granting to transportation agencies or purchasers authority to receive products from leased lands in accordance with Government rules and regulations; sign run tickets or other receipts for royalty oil or gas delivered to a representative of the lessor or to the lessor's account; and approve sales agreements and contracts, subject to any conditions, modification, or revocation that may be prescribed on review thereof by the Director.

CROSS REFERENCE: For regulations relating to approval of sales agreements or contracts, see Part 223 of this chapter.

#### § 221.14 Suspension of operations and production.

On receipt of an application for suspension of operations or production or for relief from any drilling or producing requirement under a lease, the supervisor shall forward such application, with a report and recommendation, to the appropriate official and, pending action thereon, grant such temporary approval as he may deem warranted in the premises, or reject such application, subject to the right of appeal as provided in part 290 of this chapter.

[7 FR 4132, June 2, 1942, as amended at 38 FR 10001, Apr. 23, 1973]

#### § 221.15 Beginning or resumption of drilling or producing operations.

Where drilling or producing operations have been suspended on a lease, the supervisor may approve in writing notice by the lessee of intention to begin or resume such operations: *Provided*, That whenever it appears from facts adduced by or furnished to him that the interests of the lessor require additional drilling or producing operations, the supervisor may require by notice in writing the beginning or resumption of such operations.

#### § 221.16 Enforcement.

The supervisor shall enforce the regulations in this part, and his orders issued pursuant thereto by action provided for in §§ 221.53 and 221.54 whenever, in his judgment, such action is necessary or advisable.

#### § 221.17 Appeals action.

The supervisor shall receive and promptly render his decision on any mat-

ter presented for reconsideration under the regulations in this part and shall receive and promptly transmit for review all appeals filed pursuant to part 290 of this chapter.

[38 FR 10001, Apr. 23, 1973]

#### REQUIREMENTS FOR ALL LESSEES (INCLUDING DESIGNATED OPERATORS)

#### § 221.18 Lease terms, regulations, instructions of supervisor, waste, damage, safety, and bond.

The lessee shall comply with the terms of the lease, and of the regulations in this part and any amendments thereof, and with the written instructions of the supervisor, shall take all reasonable precautions to prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, and injury to life of property, and before drilling or other operations are started, shall have submitted a satisfactory bond.

#### § 221.19 Designated operator (or agent).

(a) In all cases where operations on a lease are not conducted by the record owner, but are to be conducted under authority of an operating agreement, an unapproved assignment, or other arrangement, a "designation of operator" shall be submitted to the supervisor, in a manner and form approved by the supervisor, prior to commencement of operations. If the designation of operator form cannot be obtained from the lessee without undue inconvenience to the operator, the supervisor in his discretion may accept in lieu thereof a valid operating agreement approved by the Secretary. A designation of operator will be accepted as authority of operator or his local representative to fulfill the obligations of the lessee and to sign, as operator, any papers or reports required under the regulations in this part. It will rest in the discretion of the supervisor to determine how a local representative of the operator empowered to act in whole or in part in his stead shall be identified.

(b) If the designated operator shall at any time be incapacitated for duty or absent from his designated address, the operator or the lessee shall designate in writing a substitute to serve in his stead, and, in the absence of such operator or

of notice of the appointment of a substitute, any employee of the lessee who is on the leased lands or the contractor or other person in charge of operations will be considered the agent of the lessee for the service of orders or notices and service in person or by ordinary mail upon any such employee, contractor, or other person will be deemed service upon the operator and the lessee. All changes of address and any termination of the operator's authority shall be immediately reported, in writing, to the supervisor or his representative. In case of such termination or of controversy between the lessee and the designated operator, the operator, if in possession of the leasehold will be required to protect the interests of the lessor.

#### § 221.20 Well-location restrictions.

(a) The lessee shall not drill any well within 200 feet of any of the outer boundaries of the leased lands except where necessary to protect those lands against wells on land the title to which is not held by the lessor, and then only on consent first had in writing from the supervisor: *Provided*, That for good cause shown in any particular case, and where not prohibited by law, a lessee may be relieved of such restrictions on written consent of the supervisor. The lessee shall not drill any well within 200 feet of the boundary of any legal subdivision without first submitting adequate reasons therefor and obtaining consent in writing from the supervisor, such consent to be subject to such conditions as may be prescribed by said official.

(b) Lessees of Indian lands shall not drill any well within 200 feet of any house or barn standing on the leased lands without the lessor's written consent, approved by the officer in charge and the superintendent.

#### § 221.21 Well-spacing and well-casing program, well operations, required offsets, diligence, compensation in lieu of drilling.

(a) When required by the supervisor, the lessee shall submit an acceptable well-spacing and well-casing program for the lease or area. Such program must be approved by the supervisor and may be modified from time to time as conditions

warrant, with the consent and approval of the supervisor.

(b) The lessee shall not begin to drill, redrill, repair, deepen, plug back, shoot, or plug and abandon any well, make water shut-off or formation test, alter the casing or liner, stimulate production by vacuum, acid, gas, air, water injection, or any other method, change the method of recovering production, or use any formation or well for gas storage or water disposal without first notifying the supervisor of his plan and intention and receiving written approval prior to commencing the contemplated work. The approval by the supervisor of a drilling plan does not constitute a determination or opinion that the lessee will be entitled to an extension of his lease under any extension provisions of the public-land or acquired lands mineral leasing laws if he carries out his plan.

(c) The lessee shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage, or, in lieu thereof, with the consent of the supervisor, he must pay a sum estimated to reimburse the lessor for such loss of royalty, the sum to be computed monthly by the supervisor.

(d) The lessee, whenever drilling or producing operations are suspended for 24 hours or more, shall close the mouth of the well with a suitable plug or other fittings acceptable to the supervisor.

[7 FR 4131, June 2, 1942, as amended at 31 FR 6415, Apr. 28, 1966]

#### § 221.22 Well designations, property boundaries, markers for abandoned wells.

The lessee shall mark each and every derrick or well in a conspicuous place with his name or the name of the operator, the serial number of the lease or the name of the lessor if on Indian land, and the number and location of the well, and shall take all necessary means and precautions to preserve these markings. All abandoned wells shall be marked with a permanent monument, on which shall be shown the number and location of the well, unless this requirement is waived in writing by the supervisor. This monument shall consist of a piece of pipe not less than 4 inches in diameter and not less than 10 feet in length,

of which 4 feet shall be above the general ground level, the remainder being embedded in cement. The top of the pipe must be closed with a screw cap, cement plug, or by other approved means.

**§ 221.23 Well records and reports, plats and maps, samples, tests, and surveys.**

(a) The lessee shall keep on the leased lands or at his headquarters in the field, or otherwise conveniently available to the supervisor, accurate and complete records of the drilling, redrilling, deepening, repairing, plugging, or abandoning of all wells and of all other well operations, and of all alterations to casing. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, and landed depth of casing used in drilling each well on the leased lands, and any other information obtained in the course of well operations.

(b) Within 15 days after the completion of any well and within 15 days after the completion of any further operations on it, the lessee shall transmit to the supervisor copies of these records on forms furnished by the supervisor. (For reports to be made by all lessees or their designated operators, see §§ 221.57 to 221.65.)

(c) The lessee shall take such samples and make such tests and surveys as may be required by the supervisor with a view to determining conditions in the well and obtaining information concerning materials (formations) drilled and shall furnish such characteristic samples of each formation or substance, or reports thereon, as may be requested by the supervisor. The lessee shall gage the production of oil, gas, and water from individual wells continuously or at reasonably frequent intervals to the satisfaction of the supervisor.

(d) The lessee shall also submit in duplicate such other reports and records of operations as may be required and in the manner and form prescribed by the supervisor.

(e) Upon request and in the manner and form prescribed by the supervisor the lessee shall furnish a copy of the daily drilling report, a plat showing the location, designation, and status of all

wells on the leased lands, together with such other pertinent information as the supervisor may require.

**§ 221.24 Precautions necessary in areas where high pressures are likely to exist.**

When drilling in "wildcat" territory, or in any field where high pressures are likely to exist, the lessee shall take all necessary precautions for keeping the well under control at all times and shall provide at the time the well is started the proper high-pressure fittings and equipment; under such conditions the conductor string of casing must be cemented throughout its length, unless other procedure is authorized or prescribed by the supervisor, and all strings of casing must be securely anchored.

**§ 221.25 Cable tool drilling precautions.**

When drilling with cable tools, the lessee shall provide at least one properly prepared slush pit, into which must be deposited mud and cuttings from clay or shale free of sand that will be suitable for the mudding of a well. When necessary or required, the lessee shall provide a second pit for sand pumpings and other materials obtained from the well during the process of drilling that are not suitable for mudding.

**§ 221.26 Rotary tool drilling precautions.**

When drilling with rotary tools, the lessee shall provide, when required by the supervisor, an auxiliary mud pit or tank of suitable capacity and maintain therein a supply of mud having the proper characteristics for emergency use in case of blowouts or lost circulation.

**§ 221.27 Vertical drilling.**

The lessee shall drill substantially vertical wells, material deviation from the vertical being permitted only on written approval of the supervisor and where interests in other properties will not be unfairly affected.

**§ 221.28 Water shut-offs; formation tests.**

(a) By approved methods, the lessee shall shut off and exclude all water from any oil- or gas-bearing stratum to the satisfaction of the supervisor, and to determine the effectiveness of such operations, the lessee shall make a cas-



ing and a water shut-off test before suspending drilling operations or drilling into the oil or gas sand and completing the well.

(b) The lessee shall test for commercial productivity all formations that give evidence of carrying oil or gas, the test to be made to the satisfaction of and in a manner approved in advance by the supervisor. Unless otherwise specifically approved by the supervisor, formation tests shall be made at the time the formations are penetrated and in the absence of excessive back pressure from a column of water or mud fluid. Records of such tests shall be furnished in duplicate.

#### § 221.29 Protection of upper productive strata.

The lessee shall not deepen an oil or gas well for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected to the satisfaction of the supervisor.

#### § 221.30 Open flows and control of "wild" wells.

The lessee shall take reasonable precautions to prevent any oil, gas, or water well from blowing open, or "wild", and shall take immediate steps and exercise due diligence to bring under control any such well or burning oil or gas well.

#### § 221.31 Emulsion and dehydration.

The lessee shall complete and maintain his wells in such mechanical condition and operate them in such manner as to prevent, as far as possible, the formation of emulsion, or so-called B. S., and the infiltration of water. If the formation of emulsion, or B. S., or the infiltration of water, cannot be prevented or if all or any part of the product is unmarketable by reason thereof or on account of any impurity or foreign substance, the lessee shall put into marketable condition, if commercially feasible, all products produced from the leased land and pay royalty thereon without recourse to the lessor for deductions on account of costs of treatment or of costs of shipping. To avoid excessive losses from evaporation, oil shall not be heated to temperatures above the minimum required to put the oil into marketable condition. If excessive temperatures are required to break down an emulsion, then other means of dehydration must be

utilized. Under such circumstances the supervisor must be consulted, and his approval obtained.

#### § 221.32 Pollution and surface damage.

The lessee shall not pollute streams or damage the surface or pollute the underground water of the leased or other land. If useless liquid products of wells cannot be treated or destroyed or if the volume of such products is too great for disposal by usual methods without damage, the supervisor must be consulted, and the useless liquids disposed of by some method approved by him.

#### § 221.33 Gaging and storing oil.

All production run from leased lands shall be gaged or measured according to methods approved by the supervisor. The lessee shall provide tanks located on the leasehold, unless otherwise approved by the supervisor, suitable for containing and measuring accurately all crude oil produced from the wells and shall furnish to the supervisor at least two acceptable positive copies of 100 percent-capacity tank tables. Meters for measuring oil must be first approved by the supervisor, and tests of their accuracy shall be made when directed by that official. The lessee shall not, except during an emergency and except by special permission of the supervisor, confirmed in writing, permit oil to be stored or retained in earthen reservoirs or in any other receptacle in which there may be undue waste of oil.

#### § 221.34 Well abandonment.

(a) The lessee shall promptly plug and abandon or condition as a water well any well on the leased land that is not used or useful for the purposes of the lease, but no productive well shall be abandoned until its lack of capacity for further profitable production of oil or gas has been demonstrated to the satisfaction of the supervisor. Before abandoning a well the lessee shall submit to the supervisor a statement of reasons for abandonment and his detailed plans for carrying on the necessary work, together with duplicate copies of the log, if it has not already been submitted. A well may be abandoned only after receipt of written approval by the supervisor, in which the manner and method of abandonment shall be approved or prescribed.

Equipment shall be removed and premises at the well-site shall be properly conditioned immediately after plugging operations are completed on any well.

(b) In case the lessee of lands of the United States strikes water while drilling, instead of oil or gas, and the water is of sufficient quantity and suitable quality to be valuable and usable at a reasonable cost, the Secretary may take over the well as provided in section 40 of the Mineral Leasing Act approved June 16, 1934, 48 Stat. 977, 30 U.S.C. 299a. If a satisfactory agreement is reached, the lessee may condition the well for a water well in lieu of plugging and abandonment.

(c) Drilling equipment shall not be removed from any suspended drilling well without first securing the written consent of the supervisor.

**§ 221.35 Waste prevention; beneficial use.**

The lessee is obligated to prevent the waste of oil or gas and to avoid physical waste of gas the lessee shall consume it beneficially or market it or return it to the productive formation. If waste or gas occurs the lessee shall pay the lessor the full value of all gas wasted by blowing, release, escape, or otherwise at a price not less than 5 cents for each 1,000 cubic feet, unless, on application by the lessee, such waste of gas under the particular circumstances involved shall be determined by the Secretary to be sanctioned by the laws of the United States and of the State in which it occurs. The production of oil and gas shall be restricted to such amount as can be put to beneficial use with adequate realization of values, and in order to avoid excessive production of either oil or gas, when required by the Secretary, shall be limited by the market demand for gas or by the market demand for oil.

**§ 221.36 Accidents and fires.**

The lessee shall take all reasonable precautions to prevent accidents and fires, shall notify the supervisor within 24 hours of all accidents or fires on the leased land, and shall submit a full report thereon within 15 days.

**§ 221.37 Workmanlike operations.**

The lessee shall carry on all operations and maintain the property at all times in

a safe and workmanlike manner, having due regard for the preservation and the conservation of the property and for the health and safety of employees. The lessee shall take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations and lease tanks, and shall remove from the property or store in orderly manner all scrap or other materials not in use.

**§ 221.38 Sales contracts; division orders.**

The lessee shall file with the supervisor triplicate (quadruplicate for production of restricted Indian lands or naval petroleum reserves) executed copies of all contracts for the disposition of all products of the leased land except that portion used for purposes of production on the leased land or unavoidably lost, and he shall not sell or otherwise dispose of said products except in accordance with a sales contract, division order, or other arrangement first approved, as provided in § 221.13.

**§ 221.39 Relief from operating, royalty, and rental requirements.**

Applications for any modification authorized by law of the operating requirements of a lease for lands of the United States shall be filed in triplicate (quintuplicate for applications involving leases for lands within the naval petroleum reserves) with the supervisor, and shall include a full statement of the circumstances that render such modification necessary or proper. Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in triplicate in the office of the supervisor.

CROSS REFERENCE: For regulations of the Bureau of Land Management relating to royalty and rental relief, and suspension of operations and production, see 43 CFR Parts 3100 to 3104. [13 F.R. 9496, Dec. 31, 1948]

**§ 221.40 Royalty and rental payments.**

(a) When due in money, the lessee shall tender all payments of rental and royalty by check or draft on a solvent bank, or by money order drawn to the order of the appropriate receiving officer, in accordance with statements rendered

by the supervisor pursuant to § 221.12, or in the case of public-land leases in accordance with instructions of the Bureau of Land Management.

(b) If the lessor elects to take royalty in oil or gas, unless otherwise agreed upon, such royalty shall be delivered on the leasehold, by the lessee to the order of and without cost to the lessor, as instructed by the supervisor. Upon the lessor's request, storage for royalty oil for 30 days after the end of the calendar month in which the royalty accrues, shall be furnished free of charge. Storage shall be provided on the leased lands or at a place mutually agreed upon by the supervisor and the lessee.

#### § 221.41 Surface rights on Indian lands.

Lessees of Indian land shall have only such surface rights as are specifically granted in the lease, but additional rights may be exercised under written agreement with the owner, such agreement to be subject to the prior approval of the superintendent of the Indian agency having jurisdiction. On demand of the supervisor, pipe lines on Indian land shall be buried below plow depth.

#### § 221.42 Costs or damages.

The lessee shall pay all costs or damages assessed under the provisions of the regulations in this part.

CROSS REFERENCE: For other liabilities of the lessee in case of default, see also §§ 221.53 to 221.58.

### MEASUREMENT OF PRODUCTION AND COMPUTATION OF ROYALTIES

#### § 221.43 Measurement of oil.

The volume of production shall be computed in terms of barrels of clean oil of 42 standard United States gallons of 231 cubic inches each, on the basis of meter measurements (meter must be approved by supervisor), or tank measurements of oil-level difference, made and recorded to the nearest quarter inch of 100-percent-capacity tables, or with such greater accuracy as shall be required by the supervisor, and subject to the following corrections.

(a) *Correction for impurities.* The percentage of impurities (water, sand, and other foreign substances not constituting a natural component part of the oil) shall be determined to the satisfaction of the supervisor, and the observed gross

volume of oil shall be corrected to exclude the entire volume of such impurities.

(b) *Temperature correction.* The observed volume of oil corrected for impurities shall be further corrected to the standard volume at 60° F. in accordance with table 2 of Circular C-410 of the National Bureau of Standards (March 4, 1936), or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the supervisor.

(c) *Gravity determination.* The gravity of the oil at 60° F. shall be determined in accordance with table 1 of Circular C-410 of the National Bureau of Standards (March 4, 1936), or any revisions thereof and any supplements thereto.

(d) *Lease production, pipe-line runs.* For the convenience of the lessor and lessee, monthly statements of production and royalty shall be based in general on production recorded in pipe-line runs or other shipments. When shipments are infrequent or do not approximate actual production, the supervisor may require statements of production and royalty to be made on such other basis as he may prescribe, gains, or losses in volume of storage being taken into account when appropriate. Evidence of all shipments of oil shall be furnished by pipe-line or other run tickets signed by representatives of the lessee and of the purchaser who have witnessed the measurements reported and the determinations of gravity, temperature, and the percentage of impurities contained in the oil. Signed run tickets shall be filed with the supervisor within 5 days after the oil has been run.

#### § 221.44 Measurement of gas.

Gas of all kinds (except gas used for purposes of production on the leasehold or unavoidably lost) is subject to royalty, and all gas shall be measured by meter (preferably of the orifice-meter type) unless otherwise agreed to by the supervisor. All gas meters must be approved by the supervisor and installed at the expense of the lessee at such places as may be agreed to by the supervisor. For computing the volume of all gas produced, sold, or subject to royalty, the standard of pressure shall be 10 ounces above an atmospheric pressure of 14.4

pounds to the square inch, regardless of the atmospheric pressure at the point of measurement, and the standard of temperature shall be 60° F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the supervisor.

**§ 221.45 Determination of gasoline content of natural gas.**

Tests to determine the gasoline content of gas delivered to plants manufacturing gasoline are required to check plant efficiency and to obtain an equitable basis for allocating the gasoline output of any plant to the several sources from which the gas treated is derived. The gasoline content of the gas delivered to each gasoline plant treating gas from leased lands shall be determined periodically by field tests, as required by the supervisor, to be made at the place and by the methods approved by him and under his supervision.

**§ 221.46 Quantity basis for computing royalties on natural gasoline, butane, propane, and other liquid hydrocarbon substances extracted from gas.**

The primary quantity basis for computing monthly royalties on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas is the monthly net output of the plant at which the substances are manufactured, "net output" being defined as the quantity of each such substance that the plant produces for sale.

(a) If the net output of a plant is derived from the gas obtained from only one leasehold, the quantity of gasoline or other liquid hydrocarbon substances of which computations of royalty for the lease are based is the net output of the plant.

(b) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of uniform gasoline content, the proportion of net output of gasoline allocable to each lease as a basis for computing royalty will be determined by dividing the amount of gas delivered to the plant from each leasehold by the total amount of gas delivered to the plant from all leaseholds.

(c) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of diverse gasoline content, the proportion of net output of gasoline allocable to each leasehold as a basis for computing royalty will be determined by multiplying the amount of gas delivered to the plant from the leaseholds by the gasoline content of the gas and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leaseholds from which gas is delivered to the plant.

(d) If the net output of butane, propane, or other liquid hydrocarbon substances of a plant is derived from gas obtained from several leaseholds, the proportion of net output of such substances allocable to each leasehold as a basis for computing royalty will be determined by substituting the butane, propane, or other liquid hydrocarbon content for the gasoline content and following the method outlined in paragraph (b) or (c) of this section, whichever is applicable: *Provided*, That when in the judgment of the supervisor it is impracticable to test gas to determine the content of butane, propane, or other liquid hydrocarbon substances, the gasoline content will be used in determining the proportion of the net output of such substances allocable to each leasehold.

(e) The supervisor is authorized, whenever in his judgment neither method prescribed in paragraph (b) and (c) of this section is practicable, to estimate the production of natural gasoline, butane, propane, or other liquid hydrocarbon substances from any leasehold from (1) the quantity of gas produced from the leasehold and transmitted to the extraction plant, (2) the gasoline, butane, propane, or other liquid hydrocarbon content of such gas as determined by test, and (3) a factor based on plant efficiency or recovery and so determined as to insure full protection of the royalty interest of the lessor.

**§ 221.47 Value basis for computing royalties.**

The value of production, for the purpose of computing royalty shall be the estimated reasonable value of the product as determined by the supervisor, due consideration being given to the highest

price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per barrel, thousand cubic feet, or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality oil, gas, or other products produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value.

**§ 221.48 Royalty rates on oil; flat-rate leases.**

The royalty on crude oil shall be the percentage (established by the terms of the lease) of the value or amount of the crude oil produced from the leased lands.

**§ 221.49 Royalty rates on oil; sliding- and step-scale leases (public land only).**

Sliding- and step-scale royalties are based on the average daily production per well. The supervisor shall specify which wells on a leasehold are commercially productive, including in the category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells which yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing and the gross production from the leasehold. (Tables for computing royalty on the sliding-scale and on the step-scale basis may be obtained upon application to the supervisor.) The supervisor will determine which commercially productive wells shall be considered each month as producing wells for the purpose of

computing royalty in accordance with the following rules, and in his discretion may count as producing any commercially productive well shut-in for conservation purposes:

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the supervisor as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well-days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well-days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner, with approval of the supervisor.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on a basis of actual producing well-days.

(g) For previously producing leaseholds on which no wells were producing during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the supervisor as need arises.

(i) (1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No.	Record	Count (marked X)
1.	Produced full time for 30 days ...	X
2.	Produced for 26 days; down 4 days for repairs .....	X
3.	Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 25, 24 hours; June 26, 24 hours, pulling rods and tubing .....	X
4.	Produced for 12 days; down June 13 to 30 .....	
5.	Produced for 8 hours every other day (head well) .....	X
6.	Idle producer (not operated) .....	
7.	New well, completed June 17; produced for 14 days .....	X
8.	New well, completed June 22; produced for 9 days .....	

(2) In this example there are eight wells on the leasehold, but wells 4, 6, and 8 are not counted in computing royalties. Wells 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5, the number of wells counted as producing, and dividing the quotient thus obtained by the number of days in the month.

#### § 221.50 Royalty on gas.

The royalty on gas shall be the percentage established by the terms of the lease of the value or amount of the gas produced.

(a) Royalty accrues on dry gas, whether produced as such or as residue gas after the extraction of gasoline.

(b) If the lessee derives revenue on gas from two or more products, a royalty normally will be collected on all such products.

(c) For the purpose of computing royalty the value of wet gas shall be either the gross proceeds accruing to the lessee from the sale thereof or the aggregate value determined by the Secretary of all commodities, including residue gas, obtained therefrom, whichever is greater.

#### § 221.51 Royalty on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas.

A royalty as provided in the lease shall be paid on the value of one-third (or the lessee's portion if greater than one-third) of all casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from the gas produced from the leasehold. The value of the remainder is an allowance for the cost of manufacture, and no royalty thereon is required. The value shall be so determined that the minimum royalty accruing to the lessor shall be the percentage established by the lease of the amount or value of all extracted hydrocarbon substances accruing to the lessee under an arrangement, by contract or otherwise, for extraction and sale that has been approved by the supervisor:

(a) When a minimum price established by the Secretary is used in determining the value of natural gasoline accruing to the lessee, the volume of such gasoline may be corrected when deemed necessary by the supervisor to such standard and by such method as may be approved by the supervisor, in order that volumetric differences between natural gasolines of various specifications may be equitably adjusted.

(b) The present policy is to allow the use of a reasonable amount of dry gas for operation of the gasoline plant, the amount allowed being determined or approved by the supervisor, but no allowance shall be made for boosting residue gas, or other expenses incidental to marketing.

#### § 221.52 Royalty on drip gasoline or other natural condensate.

The royalty on all drip gasoline, or other natural condensate recovered from gas produced from the leased lands without resort to manufacturing process shall be the same percentage as provided in the lease for other oil, except that such substance, if processed in a casing-head gasoline plant shall be treated for royalty purposes as though it were gasoline.

#### PROCEDURE IN CASE OF DEFAULT BY LESSEE

#### § 221.53 Shutting down operations; lease cancellations.

The supervisor has authority to shut down any operation and place under seal any property or equipment for failure to comply with the oil and gas operating regulations in this part or orders issued under this part, to enter upon any leasehold and perform any operation that the lessee fails to perform when ordered so to do in writing, and to recommend cancellation of the lease and forfeiture under the bond for noncompliance with the applicable law, lease terms, and regulations.

#### § 221.54 Liquidated damages.

Administrative costs arising out of certain defaults or violations of orders requiring the performance of certain duties by lessees, as set forth in the regulations in this part constitute loss or damage to the United States the amount of which is difficult or impracticable of ascertainment. Therefore, the following amounts shall be deemed to cover such loss or damage and shall be payable upon receipt of notice from the oil and gas supervisor of such loss or damage: *Provided*, That as to paragraph (f) of this section the specified loss or damage shall be applicable to each week or fraction thereof during which the violation continues and as to paragraph (h) of this section the specified loss or damage shall be applicable to each day or fraction thereof during which the violation continues:

(a) For failure to perform any operation ordered in writing by the supervisor, if said operation is thereafter performed by or through the supervisor, the actual cost of performance thereof and an additional 25 percent to compensate the Government for administrative costs.

(b) For failure to maintain inviolate any seal placed upon any property or equipment by the supervisor, \$50 for each such violation.

(c) For failure to file notice of intention and to obtain approval before starting to drill, or for failure to file notice and obtain approval before making any changes in the originally approved notice of intention, \$25 for each violation.

(d) For failure to file notice and to obtain approval before repairing, redrilling, deepening, plugging-back, plugging, or abandoning any well, in pulling or altering casing, stimulating production by vacuum, acid, or shot, or gas, air, or

water injection, or using any well or formation for gas storage or water disposal, \$25 for each violation.

(e) For failure to mark wells or derricks, \$10 for each violation.

(f) For failure to install required high-pressure fittings and equipment, to cement conductor string, or to anchor properly all strings of casing, \$50 for each violation.

(g) For failure to construct and maintain in proper condition slush or mud pits, \$10 for each violation.

(h) For failure to comply with § 221.32, \$25 for each violation.

(i) For failure to file sales contracts or division orders as required by lease terms, \$25 for each violation, and for failure to submit pipe-line run tickets, or other proper evidence of disposal as required by these regulations, \$10 for each violation.

(j) For failure to file the following reports within the time specified in the regulations in this part, or within such other time designated in writing by the supervisor, \$10 for each violation:

(1) Log of well, subsequent report of drilling, redrilling, deepening, plugging-back, plugging and abandonment, making water shut-off or formation test, stimulating production by acid or shot.

(2) Lessee's Monthly Report of Operations. Daily Report of Gas-Producing Wells, when required. Lessee's Statement of Oil and Gas Runs and Royalties.

(3) Special forms or reports as required by the supervisor.

#### § 221.55 Payment of damages.

(a) Payment or request for payment for any of the damages assessed for administrative costs under the regulations in this part shall not relieve the lessee from compliance with the provisions of the regulations in this part, or for liability for waste or any other damage. A waiver of any particular cause for the payment of damages shall not be construed as precluding the assessment of damages for any other cause herein specified or for the same cause occurring at any other time.

(b) Damages shall be paid in the manner and as directed by the supervisor.

#### § 221.56 Damages to Indian property.

Damage to lands, crops, buildings, and

other improvements on Indian land shall be assessed by the superintendent and payments for such damages shall be made to the superintendent.

**REPORTS TO BE MADE BY ALL LESSEES  
(INCLUDING OPERATORS)**

**§ 221.57 General requirements.**

Information required to be submitted in accordance with the regulations in this part shall be furnished in the manner and form prescribed in the regulations in this part or as directed by the supervisor. Prescribed standard forms in general use are described in §§ 221.58–221.64. Copies of such forms can be obtained from the supervisor and must be filled out completely and filed punctually with that official. Failure of the lessee to submit the information and reports required herein constitutes noncompliance with the terms of the regulations in this part and is cause for the assessment of specific damages as prescribed by the regulations in this part and the cancellation of the lease.

**§ 221.58 Sundry notices and reports on wells (Form 9–331A Public; Form 9–331B Indian).**

Forms 9–331A and 9–331B cover all notices of intention and all subsequent reports pertaining to individual wells except those for which special blanks are provided. The forms may be used for any of the purposes listed thereon, or a special heading may be inserted in the blank to adapt it for use for similar purposes. Any written notice of intention to do work or to change plans previously approved must be filed in triplicate, unless otherwise directed, and must reach the supervisor and receive his approval before the work is begun. The lessee is responsible for receipt of the notice by the supervisor in ample time for proper consideration and action. If, in case of emergency, and notice is given orally or by wire, and approval is obtained, the transaction shall be confirmed in writing as a matter of record. The following paragraphs illustrate some of the uses to which Forms 9–331A and 9–331B may be put and indicate the requirements with respect to each use.

(a) *Notice of intention to drill.* The notice of intention to drill a well must be filed with the supervisor and approval

received before the work is begun. This notice must give the location, in feet, and direction from the nearest lines of established public survey; the altitude of the ground and derrick floor above sea level and how obtained; and the geologic name of the surface formation. Under the heading "Details of Work", the proposed drilling and casing plan should be outlined in detail. Essential information includes type of tools, proposed depth to which the well will be drilled, estimated depths to the top of important markers, estimated depths at which water, oil, gas, and mineral beds are expected, the proposed casing record, including the size and weight of casing, the depth at which each string is to be set, and the amount of cement and mud to be used. Information also shall be given relative to the drilling plan, such as making drill-stem tests, drilling in with oil, using reversed circulation, perforating opposite pays, using special types of mud in rotary drilling, coring at specified depths, and using electric logging together with any other information which may be required by the supervisor.

(b) *Notice of intention to change plans.* Where unexpected conditions necessitate any change in the plans of proposed work already approved, complete details of the changes must be submitted to the supervisor and approval thereof obtained before the work is undertaken.

(c) *Notice of date for casing and water shut-off test.* The protection and segregation of oil, gas, or water-bearing formations is an important item of conservation, and the supervisor will witness all casing and water shut-off tests. Notice must be filed with the supervisor in advance of the date on which the lessee expects to make such test. Later by agreement the exact time shall be fixed. The casing test and the test of water shut-off must be approved before further drilling can proceed. In the event of failure, casing must be repaired or replaced or recemented, whichever the conditions may require.

(d) *Subsequent report of casing and water shut-off test.* Within 15 days after making a casing or water shut-off test, the results of the test must be reported. The report must give complete and accurate details, amount of mud and cement



used, lapse of time between running and cementing the casing and making the test, method of testing, and results.

(e) *Notice of intention to redrill, repair, or condition well.* Before repairing, deepening, or conditioning a well, a detailed written statement of the plan of work must be filed with the supervisor and approval obtained before the work is started. In work that affects only rods, pumps, or tubing, or other routine work, such as cleaning out to previous total depth, no report is necessary unless specifically required by the supervisor.

(f) *Subsequent report of redrilling, repairing, or conditioning.* Within 15 days after completion of the repair work a detailed report of work done and the results obtained should be filed. Such report shall show the amount of production of oil, gas, and water, both before and after the work is done, and shall also include a complete statement of the work accomplished and methods employed, including all dates.

(g) *Notice of intention to use explosive or chemicals.* Before using explosive or chemicals (shooting or acidizing) in any well, whether for increasing production or in drilling, repair, or abandonment, notice of intention shall be filed and approval obtained before the work is done. When such notice of intention forms a part of a notice of intention to redrill, repair, or abandon a well, the supervisor may accept such notice in lieu of a separate notice of intention to use explosive or chemicals. The notice of intention to use explosive or chemicals must be accompanied by the complete log of the well to date, provided the complete log has not previously been filed, and must state the object of the work to be done, the amount and nature of the material to be used, its exact location and distribution in the well by depths, the method of localizing its effects, and the name of the company that is to do the work. The notice shall also contain an accurate statement of the dates and daily production of oil, gas, and water from the well for each of the last preceding 10 producing days.

(h) *Subsequent report of use of explosive or chemicals.* After using explosive or chemicals in any well a subsequent report must be filed with the supervisor. This report shall be filed separately with-

in 15 days after the work is done, unless such report is included in the log as a part of a report of other subsequent work done or as a part of an abandonment report any one of which shall have been filed within that period. The subsequent report of use of explosive or chemicals shall include a statement of the amount and the nature of the material used, its exact location and distribution in the well by depths, and the method used to localize its effects. The report shall also contain an accurate statement of the dates and daily production of oil, gas, and water for each of the last 10 producing days preceding the use of explosive or chemicals and a similar statement of production after the work is done. In addition, this report must include other pertinent information, such as the depth to which the well was cleaned out, the time spent in bailing and cleaning out, and any injuries to the casing or well.

(i) *Notice of intention to pull, perforate, or otherwise alter casing.* If any casing is to be pulled, perforated, or otherwise altered, notice of intention must be filed and approved before the work is started. Such notice must give full details of the contemplated work, stating fully what changes are intended and what results are anticipated. A notice of intention to perforate the casing shall state the conditions of the well that make such work desirable; whether it is to be ripped or shot, the depth, number, and size of shots, or if ripped, the depths of the rips proposed; the production of oil, gas, and water; and, if a log of the well has not already been filed, the notice should be accompanied by a duplicate copy of the log showing all casing seats as well as all water strata and all oil and gas shows.

(j) *Subsequent report of pulling, perforating, or otherwise altering casing.* If any casing has been pulled, perforated, or otherwise altered, the results of the work should be reported within 15 days after the completion of such work, stating exactly what was done and the results obtained, including any change in production. The report of perforating casing also should include the number, depth, and size of shots, the date shot, and who did the shooting. If ripped, the depths and number of rips should be stated. The production of oil, gas, and

water obtained by the work should be shown.

(k) *Notice of intention to abandon well.* Before beginning abandonment work on any well, whether drilling well, oil or gas well, water well, or so-called dry hole, notice of intention to abandon shall be filed with the supervisor and approval obtained before the work is started. The notice must show the reason for abandonment and must be accompanied by a complete log, in duplicate, of the well to date, provided the complete log has not been filed previously, and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing, as well as any other pertinent information.

(1) *Subsequent report of abandonment.* After a well is abandoned or plugged a subsequent record of work done must be filed with the supervisor. This report shall be filed separately within 15 days after the work is done. The report shall give a detailed account of the manner in which the abandonment or plugging work was carried out, including the nature and quantities of materials used in plugging and the location and extent (by depths) of the plugs of different materials; records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well; and a detailed statement of the volume of mud fluid used, and the pressure attained in mudding. If an attempt was made to part any casing, a complete report of the methods used and results obtained must be included.

#### § 221.59 Log and history of well (Form 9-330).

The lessee shall furnish in duplicate, on Form 9-330, to the supervisor, not later than 15 days after the completion of each well, a complete and accurate log and history, in chronologic order, of all operations conducted on the well. If a log is compiled for geologic information from cores or formation samples, duplicate copies of such log shall be filed in addition to the regular log. Duplicate copies of all electric logs, temperature surveys, or direction surveys shall be furnished. The lessee shall require the

drillers, whether using company labor or contract labor, to record accurately the depth, character, fluid content, and fluid levels, where possible, of each formation as it is penetrated, together with all other pertinent information obtained in drilling the well. The practice of compiling well logs from memory, after the work has been completed, will not be permitted.

#### § 221.60 Monthly report of operations (Form 9-329 Public; Form 9-329A Indian).

A separate report of operations for each lease must be made on Form 9-329 for public land and on Form 9-329A for Indian land, for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed in duplicate with the supervisor on or before the 6th day of the succeeding month, unless an extension of time for the filing of such report is granted by the supervisor. The report on this form shall disclose accurately all operations conducted on each well during each month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands, and the report must be submitted each month until the lease is terminated or until omission of the report is authorized by the supervisor. It is particularly necessary that the report shall show for each calendar month:

(a) The lease be identified by inserting the name of the United States land office and the serial number, or in the case of Indian land the lease number and lessor's name, in the space provided in the upper right corner;

(b) Each well be listed separately by number, its location be given by 40-acre subdivision ( $\frac{1}{4}$   $\frac{1}{4}$  sec. or lot), section number, township, range, and meridian;

(c) The number of days each well produced, whether oil or gas, and the number of days each input well was in operation be stated;

(d) The quantity of oil, gas, and water produced, the total amount of gasoline, and other lease products recovered, and other required information. When oil and gas, or oil, gas, and gasoline, or other hydrocarbons are concurrently produced from the same lease,

separate reports on this form should be submitted for oil and for gas and gasoline, unless otherwise authorized or directed by the supervisor.

(e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date each such depth was reached, the date and reason for every shut-down, the names and depths of important formation changes and contents of formation, the amount and size of any casing run since last report, the dates and results of any tests such as production, water shut-off, or gasoline content, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote must be completely filled out as required by the supervisor. If no runs or sales were made during the calendar month, the report must so state.

**§ 221.61 Daily report of gas-producing wells (Form 9-352).**

Unless otherwise directed by the supervisor, the readings of all meters showing production of natural gas from leased lands shall be submitted daily on Form 9-352, together with the meter charts. After a check has been had the meter charts will be returned.

**§ 221.62 Statement of oil and gas runs and royalties (Form 9-361 Public; Form 9-361A Indian).**

When directed by the supervisor, a monthly report shall be made by the lessee in duplicate, on Form 9-361 or 9-361A, showing each run of oil, all sales of gas, gasoline, other lease products, and the royalty accruing therefrom to the lessor. When use of this form is required it must be completely filled out and sworn to.

**§ 221.63 Royalty and rental remittance (Form 9-614A Indian).**

Form 9-614A, completely filled out and signed, shall be submitted to the supervisor in triplicate and shall accompany each remittance covering payments of royalty or rental on Indian lands.

**§ 221.64 Royalty and rental remittance (Form 11ND Naval Petroleum Reserves).**

Form 11ND, completely filled out and

signed, must accompany each remittance covering payments of royalty or rental on Naval Petroleum Reserves. The remittance and the original form shall be sent direct to the Property Accounting Officer, United States Navy, Bureau of Supplies and Accounts, Navy Department, Washington, D.C. 20360, and the duplicate and triplicate copies of the form shall be sent to the oil and gas supervisor.

**§ 221.65 Special forms or reports.**

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the supervisor.

**§ 221.66 Appeals.**

Orders or decisions issued under the regulations in this part may be appealed from as provided in part 290 of this chapter. Compliance with any such order or decision shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director or the Board of Land Appeals (depending upon the official before whom the appeal is pending) and then only upon a determination that such suspension will not be detrimental to the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

[38 FR 10001, Apr. 23, 1973]

**§ 221.67 Effective date; repeal of prior regulations.**

The regulations in this part shall become effective on the 1st day of June 1942, and shall supersede the oil and gas operating regulations of November 1, 1936, as amended, 30 CFR, 1938 ed., 221.1 to 221.56, except as to leases and unit agreements in force and effect on June 1, 1942, to which the regulations in this part are not applicable.<sup>1</sup>

**PART 231 — OPERATING REGULATIONS FOR EXPLORATION DEVELOPMENT, AND PRODUCTION**

**ADMINISTRATION OF REGULATIONS AND DEFINITIONS**

**Sec.**

- 231.1 Scope and purpose.
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- 231.3 Responsibilities.
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**MAPS AND PLANS**

- 231.10 Operating plans.
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- INSPECTION, ISSUANCE OF ORDERS AND ENFORCEMENT OF ORDERS
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- 231.71 Issuance of orders.
- 231.72 Service of notices, instructions, and orders.
- 231.73 Enforcement of orders.
- 231.74 Appeals.

**AUTHORITY:** The provisions of this Part 231 issued under 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a-f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483-485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387.

**SOURCE:** 37 FR 11041, June 1, 1972, unless otherwise noted.

## ADMINISTRATION OF REGULATIONS AND DEFINITIONS

### § 231.1 Scope and purpose.

(a) The regulations in this part shall govern operations for the discovery, testing, development, mining, and processing of potash, sodium phosphate, sulphur, asphalt, and oil shale (except for operations for the extraction of shale oil by in situ retorting methods utilizing boreholes or wells) under leases or permits issued for public domain lands pursuant to the regulations in 43 CFR Group 3500. These regulations shall also

apply to operations for the discovery, testing, development, mining, and processing of minerals (except coal, oil, and gas) in acquired lands under leases or permits issued pursuant to the regulations in 43 CFR Group 3500 and minerals (except coal, oil, and gas) in tribal and allotted Indian lands leased under the regulations in 25 CFR Parts 171, 172, 173, 174, and 176.

(b) The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining, and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to promote the safety, health, and welfare of workmen; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize, or correct damage to the environment—land, water and air—and avoid, minimize, or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

(c) When the regulations in this part relate to matters included in the regulations in 43 CFR Part 23—Surface Exploration, Mining, and Reclamation of Lands—pertaining to public domain and acquired lands, or 25 CFR Part 177—Surface Exploration, Mining, and Reclamation of Lands—pertaining to Indian lands, the regulations in this part shall be considered as supplemental to the regulations in those parts, and the regulations in those parts shall govern to the extent of any inconsistencies.

**CROSS REFERENCE:** See Part 211 of this chapter for regulations governing operations under coal permits and leases. See Part 221 of this chapter for regulations governing operations under oil and gas leases and operations for the extraction of shale oil by in situ retorting or other methods utilizing boreholes or wells.

### § 231.2 Definitions.

The terms used in this part shall have the following meanings:

(a) *Secretary*. The Secretary of the Interior.

(b) *Director*. The Director of the Geological Survey, Washington, D.C.

(c) *Mining Supervisor*. The Area Mining Supervisor, Conservation Division of the Geological Survey; a representative of the Secretary, subject to the direction

and supervisory authority of the Director, the Chief, Conservation Division, Geological Survey, and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part, or any subordinate acting under his direction.

(d) *Lessee*. Any person or persons, partnership, association, corporation, or municipality to whom a mineral lease is issued subject to the regulations in this part, or an assignee of such lease under an approved assignment.

(e) *Permittee*. Any person or persons, partnership, association, corporation, or municipality to whom a mineral prospecting permit is issued subject to the regulations in this part, or an assignee of such permit under an approved assignment.

(f) *Leased lands, leased permits, or leased tract*. Any lands or deposits under a mineral lease and subject to the regulations in this part.

(g) *Permit lands*. Any lands or deposit under a mineral prospecting permit and subject to the regulations in this part.

(h) *Operator*. A lessee or permittee or one conducting operations on the leased or permit lands under the authority of the lessee or permittee.

(i) *Reclamation*. The measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration, testing, mineral development, mining, on site processing operations, or waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

[37 FR 11041, June 1, 1972, as amended at 38 FR 10001, Apr. 23, 1973]

### § 231.3 Responsibilities.

(a) Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered by the Director through the Chief, Conservation Division, of the Geological Survey.

(b) The responsibility for health and safety inspections of mines subject to the regulations in this part is vested in the Bureau of Mines in accordance with section 4 of the Federal Metal and Non-metallic Mine Safety Act (80 Stat. 772,

773; 30 U.S.C. 723) and the Health and Safety Standards contained in Parts 55, 56, and 57, Chapter I, of this title.

(c) The mining supervisor, individually, or through his subordinates is empowered to regulate prospecting, exploration, testing, development, mining and processing operations under the regulations in this part. The duties of the mining supervisor or his subordinates include the following:

(1) *Inspections; supervision of operations to prevent waste or damage*. Examine frequently leased or permit lands where operations for the discovery, testing, development, mining, or processing of minerals are conducted or are to be conducted; inspect and regulate such operations, including operations at accessory plants, for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits, or nonmineral resources affected by the operations, and insuring that the terms and conditions of the permit or lease and the requirements of the exploration or mining plans are being complied with.

(2) *Compliance with regulations, lease or permit terms, and approved plans*. Require operators to conduct their operations in compliance with the provisions of applicable regulations, the terms and conditions of the leases or permits, and the requirements of approved exploration or mining plans.

(3) *Reports on condition of lands and manner of operations; recommendations for protection of property*. Make reports to the Chief, Conservation Division through the Regional Conservation Manager, Conservation Division of Geological Survey, as to the general condition of lands under permit or lease and the manner in which operations are being conducted and orders or instructions are being complied with, and to submit information and recommendations for protecting the minerals, the mineral-bearing formations and the nonmineral resources.

(4) *Manner and form of records, and notices*. Prescribe, subject to the concurrence of the Regional Conservation Manager, Conservation Division, and the approval of the Chief, Conservation Division of the Geological Survey, the manner and form in which records of

operations, reports, and notices shall be made.

(5) *Records of production; rentals and royalties.* Obtain and check the records of production of minerals; determine rental and royalty liability of lessees and permittees; collect and deposit rental and royalty payments; and maintain rental and royalty accounts.

(6) *Suspension of operations and production.* Act on applications for suspension of operations or production or both filed pursuant to 43 CFR 3503.3-2(e), and terminate such suspensions which have been granted; and transmit to the Bureau of Indian Affairs for appropriate action applications for suspension of operations or production or both under leases on Indian lands.

(7) *Cessation and abandonment of operations.* Upon receipt of a report of cessation or abandonment of operations, inspect and determine whether the terms and conditions of the permit or lease and the exploration or mining plans have been complied with; and determine and report to the agency having administrative jurisdiction over the lands when the lands have been properly conditioned for abandonment. The mining supervisor, in accordance with applicable regulations, will consult with, or obtain the concurrence of, the authorized officer of the agency having administrative jurisdiction over the lands with respect to compliance by the operator with the surface protection and reclamation requirements of the lease or permit and the exploration or mining plan.

(8) *Trespass involving removal of mineral deposits.* Report to the agency having administrative jurisdiction over the lands any trespass that involves removal of mineral deposits.

(d) Prior to the approval of an exploration or mining plan, the mining supervisor shall consult with the authorized officer of the agency having administrative jurisdiction over the land with respect to the surface protection and reclamation aspects of the plan.

(e) The mining supervisor shall inspect exploratory and mining operations to determine the adequacy of water management and pollution control measures for the protection and control of the quality of surface and ground water resources and the adequacy of emission

control measures for the protection and control of air quality.

(f) The mining supervisor shall issue such orders and instructions not in conflict with the laws of the State in which the leased or permit lands are situated as necessary to assure compliance with the purposes of the regulations in this part.

(g) In the exercise of his jurisdiction under the regulations in this part, the mining supervisor shall be subject to the direction and supervisory authority of the Chief, Conservation Division, and the appropriate Regional Conservation Manager, Conservation Division of the Geological Survey, each of whom may exercise the jurisdiction of the mining supervisor.

[37 FR 11041, June 1, 1972, as amended at 38 FR 10001, Apr. 23, 1973]

#### § 231.4 General obligations of lessees and permittees.

(a) Operations for the discovery, testing, development, mining, or processing of minerals shall conform to the provisions of applicable regulations, the terms and conditions of the lease or permit, the requirements of approved exploration or mining plans, and the orders and instructions issued by the mining supervisor or his subordinates under the regulations in this part. Lessees and permittees shall take precautions to prevent waste and damage to mineral-bearing formations, and shall take such steps as may be needed to prevent injury to life or health and to provide for the health and welfare of employees.

(b) Lessees and permittees shall take such action as may be needed to avoid, minimize, or repair soil erosion; pollution of air; pollution of surface or ground water; damage to vegetative growth, crops, including privately owned forage, or timber; injury or destruction of fish and wildlife and their habitat; creation of unsafe or hazardous conditions; and damage to improvements, whether owned by United States, its permittees, licensees or lessees, or by others; and damage to recreational, scenic, historical, and ecological values of the land. The surface of leased or permit lands shall be reclaimed in accordance with the terms and conditions prescribed in the lease or permit and the provisions of the approved

exploration or mining plan. Where any question arises as to the necessity for or the adequacy of an action to meet the requirements of this paragraph, the determination of the mining supervisor shall be final subject to the right of appeal as provided in part 290 of this chapter.

(c) All operations conducted under the regulations in this part must be consistent with Federal and State water and air quality standards.

(d) When the mining supervisor determines that a water pollution problem exists, the mining supervisor may require that a lessee or permittee maintain records of the use of water, quantity and quality of waste water produced, and the quantity and quality of waste water disposal, including mine drainage discharge, process wastes and associated wastes. In order to obtain this information, the lessee or permittee may be required to install a suitable monitoring system.

(e) Full reports of accidents, inundations, or fires shall be promptly mailed to the mining supervisor by the operator or his representative. Fatal accidents, accidents threatening damage to the mine, the lands, or the deposits, or accidents which could cause water pollution shall be reported promptly to the mining supervisor by telegram or telephone. The reports required by this section shall be in addition to those required by Parts 55, 56, or 57, Chapter I of this title or other applicable regulations.

(f) Lessees and permittees shall submit the reports required by 25 CFR Part 177; Part 200 of this chapter, and 43 CFR Part 23.

[37 FR 11041, June 1, 1972, as amended at 38 FR 10001, Apr. 23, 1973]

### § 231.5 Public inspection of records.

Geological and geophysical interpretations, maps, and data and commercial and financial information required to be submitted under this part shall not be available for public inspection without the consent of the permittee or lessee so long as the permittee or lessee furnishing such data, or his successors or assignees, continues to hold a permit or lease of the lands involved.

## MAPS AND PLANS

### § 231.10 Operating plans.

(a) *General.* Before conducting any operations under a permit or lease, the operator shall submit, in quintuplicate, to the mining supervisor for approval an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development, or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The mining supervisor shall consult with the other agencies involved, and shall promptly approve the plans or indicate what modifications of the plans are necessary to conform to the provisions of the applicable regulations and the terms and conditions of the permit or lease. No operations shall be conducted except under an approved plan.

(b) *Exploration plans.* The mining supervisor may require that an exploration plan include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Five copies of a suitable map or aerial photograph showing topographic, cultural, and drainage features;

(3) A statement of proposed exploration methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) *Mining plans.* The mining supervisor may require that a mining plan include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Five copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit or lease, the name and location of major topographic and cultural features, and the drainage plan away from the area affected;

(3) A statement of proposed methods of operating, including a description of

the surface or underground mining methods; the proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or other natural resources, and hazards to public health and safety;

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the operations.

(d) *Revegetation; regrading; backfilling.* In those instances in which the permit or lease requires the revegetation of an area to be affected by operations the exploration or mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

If the permit or lease requires regrading and backfilling, the exploration or mining plan shall show the proposed methods and the timing of grading and backfilling of areas of lands affected by the operations.

(e) *Changes in plans.* Exploration and mining plans may be changed by mutual consent of the mining supervisor and the operator at anytime to adjust to changed conditions or to correct an oversight. To obtain approval of a changed or supplemental plan the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed.

(f) *Partial plan.* If circumstances warrant, or if development of an explo-

ration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

#### § 231.11 Maps of underground workings and surface operations and equipment.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the mining supervisor. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the mining supervisor vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys made at least annually and as may be necessary at other times. Accurate copies of such maps on reproducible material or prints thereof shall be furnished the mining supervisor when and as required. The maps shall be posted to date and submitted to the mining supervisor at least once each year. The accuracy of maps furnished shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

#### § 231.12 Other maps.

(a) The operator shall prepare such maps of the leased lands as in the judgment of the mining supervisor are necessary to show the surface boundaries, improvements, and topography, including subsidence resulting from mining, and the geological conditions so far as determined from outcrops, drill holes, exploration or mining. All excavations in each separate bed or deposit shall be shown in such manner that the production of minerals for any royalty period can be accurately ascertained.

(b) In the event the failure of the operator to furnish the maps required, the mining supervisor shall employ a competent mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator.

(c) If any map submitted by an operator is believed to be incorrect, the min-



ing supervisor may cause a survey to be made, and if the survey shows the map submitted by the operator to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator.

#### BORE HOLES AND SAMPLES

##### § 231.20 Core or test hole, cores, samples, cuttings, mill products.

(a) The operator shall submit promptly to the mining supervisor signed copies, in duplicate, of records of all core or test holes made on the leased or permit lands, the records to be in such form that the position and direction of the holes can be accurately located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, quicksand, gas or unusual conditions, and copies of analyses of all samples analyzed from strata penetrated shall be transmitted to the mining supervisor as soon as obtained or at such time as specified by the mining supervisor. All drill holes will be logged under supervision of a competent geologist or engineer, and the lessees will furnish to the mining supervisor a detailed lithologic log of each drill hole and all other in-hole surveys, such as electric logs, gamma ray neutron logs, some logs or any other logs produced. The core from test holes shall be retained by the operator for 1 year and shall be available for inspection at the convenience of the mining supervisor, and he shall be privileged to cut such cores and receive samples of such parts as he may deem advisable, or on request of the mining supervisor the operator shall furnish such samples of strata, drill cuttings, and mill products as may be required.

(b) Drill holes for development or holes for prospecting shall be abandoned to the satisfaction of the mining supervisor by cementing and/or casing or by other methods approved in advance by the mining supervisor and in a manner to protect the surface and not to endanger any present or future underground operation or any deposit of oil, gas, other mineral substances, or water strata.

(c) At the option of the mining supervisor or the operator drill holes may be converted to surveillance wells for the purpose of determining the effect of sub-

sequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(d) When drilling on lands valuable or potentially valuable for oil and gas or geothermal resources drilling equipment shall be equipped with blowout control devices acceptable to the mining supervisor before penetrating more than 100 feet of consolidated sediments unless a greater depth is approved in advance by the mining supervisor.

#### WELFARE AND SAFETY

##### § 231.25 Sanitary, welfare, and safety arrangements.

The underground and surface sanitary, welfare, health, and safety arrangements shall be in accordance with the recommendations of the U.S. Public Health Service and the applicable standards in Parts 55, 56, and 57, Chapter I of the title.

CROSS REFERENCE: For regulations of the U.S. Public Health Service, Department of Health, Education, and Welfare, see 42 CFR Chapter I.

#### MINING METHODS

##### § 231.30 Good practice to be observed.

The operator shall observe good practice following the highest standards in prospecting, exploration, testing, development, and mining, sinking wells, shafts, and winzes, driving drifts and tunnels, stoping, blasting, transporting ore and materials, hoisting, the use of explosives, timbering, pumping, and other activities on the leased or permit lands.

##### § 231.31 Ultimate maximum recovery; information regarding mineral deposits.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water, and air. All shifts, main exits, and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the mining supervisor.

(b) Information obtained regarding the mineral deposit being worked and

other mineral deposits on the leased or permit lands shall be fully recorded and a copy of the record furnished to the mining supervisor.

**§ 231.32 Pillars left for support.**

Sufficient pillars shall be left in first mining to insure the ultimate maximum recovery of mineral deposits when the time arrives for the removal of pillars. Boundary pillars shall in no case be less than 50 feet thick unless otherwise specified in writing by the mining supervisor. Boundary and other main pillars shall be mined only with the written consent or by order of the mining supervisor or his authorized subordinates.

**§ 231.33 Boundary pillars and isolated blocks.**

(a) If the ore on adjacent lands subject to these regulations has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the lessee's adjacent operations, and if no other hazards exist, the lessee shall, on the written demand of the mining supervisor, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the mining supervisor determines that it can be mined without undue hardship to the lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to these regulations and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions specified in paragraphs (a) and (b) of this section.

**§ 231.34 Development on leased tract through adjoining mines as part of a mining unit.**

A lessee may mine his leased tract from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) A mine that is on the land privately owned or controlled shall conform

to all sections in the regulations in this part.

(b) The only connections between the mine on land privately owned or controlled and the mine on leased land shall be the main haulageways, the ventilationways, and the escapeways. Substantial concrete frames and fireproof doors that may be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The mining supervisor may waive any of the requirements in this paragraph when, in his judgment, such a waiver would not conflict with the regulations in Part 57, Chapter I of this title and would not entail substantial loss of ore.

(c) Free access for inspection of said connecting mine on land privately owned or controlled shall be given at any reasonable time to the mining supervisor or other representative of the Secretary of the Interior.

(d) If a lessee operating on a lease through a mine on land privately owned or controlled does not maintain the mine in accordance with the operating regulations, operations on the leased land may be ordered stopped or departmental seals applied by the mining supervisor, and the operations on leased lands shall be stopped.

**§ 231.35 Minerals soluble in water; brines; mineral taken in solution.**

In mining or prospecting deposits of potassium or other minerals soluble in water, all well, shafts, prospect holes, and other openings shall be adequately protected with neat cement or other suitable materials against the coursing or entrance of water; and the operator shall, on orders of the mining supervisor, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water. On leased or permit land containing brines, due precaution shall be exercised to prevent the deposits becoming diluted or contaminated by the mixture of water or valueless solution. Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of the leased lands without the written permission of the mining supervisor.

**PROTECTION AGAINST MINE HAZARDS****§ 231.40 Surface openings.**

(a) The operator shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the permit or lease. Before abandonment of operations all openings, including water discharge points, shall be closed to the satisfaction of the mining supervisor.

(b) Reclamation or protection of surface areas no longer needed for operations should commence without delay. The mining supervisor shall designate such areas where restoration or protective measures, or both, must be taken.

**§ 231.41 Abandonment of underground workings.**

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance and written approval of the mining supervisor.

**§ 231.42 Flammable gas and dust.**

Mines in which flammable gas is found or explosive dust produced shall be subject to the coal-mining operating regulations in Part 211 of this chapter. An "explosive dust" is a combustible solid in airborne dispersion capable of propagating flame when ignited.

**§ 231.43 Fire protection.**

All structures within 100 feet of any mine opening shall be protected against fire and constructed of fire resistant material. Flammable material shall not be stored within 100 feet of a mine exit. All shifts shall be fireproof, or adequate fire-control devices, satisfactory to the mining supervisor, shall be installed. All underground offices, stations, shops, magazines, and stores shall be so constructed, equipped, and maintained as to reduce the fire hazard to a minimum. Sufficient fire-fighting apparatus shall be maintained in working condition at the mine exits and at convenient points in the mine workings for fire emergencies. An adequate water supply shall be held in storage tanks or reservoirs for fire emergencies and shall be available for immediate use through connecting pipe-

lines for either surface or underground fires.

**MILLING; WASTE FROM MINING OR MILLING****§ 231.50 Milling.**

It shall be the duty of the operator to conduct milling operations pursuant to the terms of the lease, the approved mining plan, and the regulations in this part and to use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical processes, by distillation, by evaporation or other means so that the percentage of salts, concentrates, oil, or other mineral substances recovered shall be in accordance with approved practices.

**§ 231.51 Disposal of waste.**

The operator shall dispose of all wastes resulting from the mining, reduction, concentration, or separation of mineral substances in accordance with the terms of the lease, approved mining plan, the regulations in this part, and the directions of the mining supervisor.

**PRODUCTION RECORDS AND AUDIT****§ 231.60 Books of account.**

Operators shall maintain books in which will be kept a correct account of all ore and rock mined, of all ore put through the mill, of all mineral products produced, and of all ore and mineral products sold and to whom sold, the weight, assay value, moisture content, base price, dates, penalties, and price received, and the percentage of the mineral products recovered and lost shall be shown.

CROSS REFERENCE: See Part 200 of this chapter for reports required to be filed and the forms to be used.

**§ 231.61 Royalty basis.**

The sale price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the ore and mineral products, at the usual and customary place of disposing of them at the time of sale, and the right is reserved to the Secretary of the Interior to determine and declare such market price, if it is deemed necessary by him to do so for the protection of the interests of the lessor.

**§ 231.62 Audits.**

An audit of the lessee's accounts and books may be made annually or at such other times as may be directed by the mining supervisor, by certified public accountants, and at the expense of the lessee. The lessee shall furnish free of cost duplicate copies of such annual or other audits to the mining supervisor, within 30 days after the completion of each auditing.

**INSPECTION, ISSUANCE OF ORDERS, AND  
ENFORCEMENT OF ORDERS**

**§ 231.70 Inspection of underground and surface conditions; surveying, estimating, and study.**

Operators shall provide means at all reasonable hours, either day or night, for the mining supervisor or his representative to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or mineral product mined; to study the methods of prospecting exploration, testing, development, processing, and handling that are followed; to determine the volumes, types, and composition of wastes generated, the adequacy of measures for minimizing the amount of such wastes, and the measures for treatment and disposal of such wastes; and to determine whether the terms and conditions of the permit or lease and the requirements of the exploration or mining plan have been complied with.

**§ 231.71 Issuance of orders.**

Before beginning operations the operator shall inform the mining supervisor in writing of the designation and post office address of the exploration or mining operation, the operator's temporary and permanent post office address, and the name and post office address of the superintendent or other agent who will be in charge of the operations and who will act as the local representative of the operator. The mining supervisor shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

**§ 231.72 Service of notices, instructions, and orders.**

The operator shall be considered to have received all notices, instructions,

and orders that are mailed to or posted at the mine or mine office, or mailed or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine for transmittal to the operator or his local representative.

**§ 231.73 Enforcement of orders.**

(a) If the mining supervisor determines that an operator has failed to comply with the regulations in this part, other applicable departmental regulation, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan, or with the mining supervisor's orders or instructions, and such noncompliance does not threaten immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the mining supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor of operations.

(b) A notice of noncompliance shall specify in what respects the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan or the orders and instructions of the mining supervisor, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(c) If the judgment of the mining supervisor such failure to comply with the regulations, the terms and conditions of the permit or lease, the requirements of approved exploration or mining plans, or with the mining supervisor's orders or instructions threatens immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the mining supervisor is authorized, either in writing or orally with written confirmation, to suspend operations without prior notice.

**§ 231.74 Appeals.**

Orders or decisions issued under the regulations in this part may be appealed as provided in part 290 of this chapter.

[38 FR 10001, Apr. 23, 1973]

CROSS REFERENCE: See 43 CFR 23.12 for appeals under 43 CFR Part 23—Surface Exploration, Mining, and Reclamation of Lands. See 25 CFR 177.11 for appeals under 25 CFR Part 177—Surface Exploration, Mining, and Reclamation of Lands.

**PART 290—APPEALS PROCEDURES****§ 290.1 Scope.**

The rules and procedures set forth herein apply to appeals to the Director, Geological Survey (and the Commissioner of Indian Affairs when Indian lands are involved) from final orders or decisions of officers of the Conservation Division, Geological Survey, issued un-

der authority of the regulations in chapter II of this title, 43 CFR part 23, 43 CFR subtitle B, chapter II, and 25 CFR part 177. This part also provides for the further right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, from adverse decisions of the Director (and the Commissioner of Indian Affairs when Indian lands are involved) rendered under this part.

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**§ 290.6 Appeals to the Commissioner of Indian Affairs.**

The procedure for appeals under this part shall be followed for permits and leases on Indian land except that with respect to such permits and leases, the Commissioner of Indian Affairs will exercise the functions vested in the Director, Geological Survey.

# TITLE 31—MONEY AND FINANCE: TREASURY

## CHAPTER 1—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

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AUTHORITY: The provisions of this Part 51 are issued under Pub. L. 92-512; and 5 U.S.C. 301.

SOURCE: 38 FR 9132, Apr. 10, 1973, unless otherwise noted.

#### Subpart A—General Information

##### § 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this part are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512) applicable to entitlement periods beginning January 1, 1973. Subpart A sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes reports required under this part and publicity concomitant thereto. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlement. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part prescribes fiscal procedures and auditing requirements. Subpart F of this part

contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part.

(b) *Saving clause.* Any cause of action arising out of noncompliance with the interim regulations covering payments made for the first and second entitlement periods (January 1, 1972, through June 30, 1972, and July 1, 1972, through December 31, 1972) shall continue to be covered by such regulations and any preceeding commenced thereon shall be governed by the procedures set forth in Subpart F of this part.

#### § 51.1 Establishment of Office of Revenue Sharing.

There is established in the Office of the Secretary of the Treasury the Office of Revenue Sharing. The office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, Public Law 92-512.

#### § 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972, Title I of Public Law 92-512, approved October 20, 1972.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, or the chairman of a county commission or board in a county that has no elected county executive, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Entitlement" means the amount of payment to which a State government or unit of local government is entitled as determined by the Secretary pursuant to an allocation formula contained in the Act and as established by regulation under this part.

(e) "Entitlement funds" means the amount of funds paid or payable to a State government or unit of local government for the entitlement period.

(f) "Entitlement period" means one of the following periods of time:

(1) The 6-month period beginning January 1, 1973, and ending June 30, 1973.

(2) The fiscal year beginning July 1, 1973, and ending June 30, 1974.

(3) The fiscal year beginning July 1, 1974, and ending June 30, 1975.

(4) The fiscal year beginning July 1, 1975, and ending June 30, 1976.

(5) The 6-month period beginning July 1, 1976, and ending December 31, 1976.

(g) "Governor" means the Governor of any of the 50 States or the Commissioner of the District of Columbia.

(h) "Independent public accountants" means independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(i) "Indian tribes and Alaskan native villages" means those Indian tribes and Alaskan native villages which have a recognized governing body and which perform substantial governmental functions. Certification to the Secretary by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute prima facie evidence of that fact.

(j) "Recipient government" means a State government or unit of local government as defined in this section.

(k) "Secretary" means the Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(1) "State government" means the

government of any of the 50 States or the District of Columbia.

(m) "Unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government and which shall be determined on the basis of the same principles as used by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

### § 51.3 Procedure for effecting compliance.

(a) *In general.* If the Secretary determines that a recipient government has failed to comply substantially with any provision of this part, and after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government pursuant to Subpart F of this part, the Secretary shall notify the recipient government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(b) *Determination to delay payment.* Whenever the Secretary determines that a recipient government has failed to comply with the communication requirements of Subpart B, he may delay payment of entitlement funds to such recipient. A determination to delay payment of entitlement funds shall not be subject to the procedure set forth in paragraph (a) of this section and shall be in effect only for such time as is necessary to effect compliance.

[38 FR 18668, July 13, 1973; 38 FR 19801, July 24, 1973]

### § 51.4 Extension of time.

When by these regulations (other than those specified in subpart F of this part) an act is required within a specified time, the Secretary may grant a request for an extension of time if in his judgment it is necessary and appropriate. Requests for extensions of time shall set forth the facts and circumstances supporting the need for more time and the amount of additional time requested.

### § 51.5 Transfer of funds to secondary recipients.

Those prohibitions and restrictions set forth in Subpart D of this part which are applicable to a recipient government's entitlement funds continue to be applicable to such funds if they are transferred to another governmental unit or private organization. A violation of Subpart D of this part by a secondary recipient shall constitute a violation by the recipient government and the applicable penalty shall be imposed on the recipient government.

[38 FR 9132, Apr. 10, 1973, as amended at 38 FR 18668, July 13, 1973]

## Subpart B—Reports and Written Communications

### § 51.10 Reports to the Secretary; assurances.

(a) *Reports for review and evaluation.* The Secretary may require each recipient government receiving entitlement funds to submit such annual and interim reports (other than those required by § 51.11) as may be necessary to provide a basis for evaluation and review of compliance with and effectiveness of the provisions of the Act and regulations of this part.

(b) *Requisite assurances for receipt of entitlement funds.* Each Governor of a State or chief executive officer of a unit of local government, in order to qualify for entitlement funds, must file a statement of assurances when requested by the Secretary, on a form to be provided, that such government will abide by certain specific requirements of the Act and the prohibitions and restrictions of Subparts D and E of this part, with respect to the use of entitlement funds. The Secretary will afford each Governor the opportunity for review and



comment to the Secretary on the adequacy of the assurances by units of local government in his State.

**§51.11 Report on planned use and actual use of funds.**

(a) *Planned use report.* Each recipient government which expects to receive funds under the Act shall submit to the Secretary a report, on a form to be provided, of the specific amounts and purposes for which it plans to spend the funds which it expects to receive for an entitlement period. The planned use reports for the third and fourth entitlement periods (the 6-month period beginning January 1, 1973 and ending June 30, 1973, and the fiscal year beginning July 1, 1973 and ending June 30, 1974) shall be filed with the Secretary on a date he shall determine. Thereafter, each planned use report shall be filed prior to the beginning of an entitlement period as defined in § 51.2(f).

(b) *Actual use report; status of trust fund.* Each recipient government which receives funds pursuant to the Act shall submit to the Secretary an annual report, on a form to be provided, of the amounts and purposes for which such funds have been spent or otherwise transferred from the trust fund (as defined in § 51.40(a)) during the reporting period. Such report also shall state any interest earned on entitlement funds during the period. Such reports shall show the status of the trust fund including its balance as of June 30 and shall be filed with the Secretary on or before September 1 of each calendar year. All such funds must be used, obligated, or appropriated within the time period specified in § 51.40(b).

[38 FR 9132, Apr. 10, 1973, as amended at 38 FR 18668, July 31, 1973]

**§ 51.12 Certifications.**

The Secretary shall require a certification by the Governor, or the chief executive officer of the unit of local government, that no entitlement funds have been used in violation of the prohibition contained in § 51.30 against the use of entitlement funds for the purpose of obtaining matching Federal funds. In the case of a unit of local government the Secretary shall require a certification by the chief executive officer that entitlement funds received by it have been used

only for priority expenditures as prescribed by § 51.31. The certifications required by this section shall be in such form as the Secretary may prescribe.

**§51.13 Publication and publicity of reports; public inspection.**

(a) *Publication of required reports.* Each recipient government must publish in a newspaper a copy of each report required to be filed under § 51.11 (a) and (b) prior to the time such report is filed with the Secretary. Such publication shall be made in one or more newspapers which are published within the State and have general circulation within the geographic area of the recipient government involved. In the case of a recipient government located in a metropolitan area which adjoins and extends beyond the boundary of the State, the recipient government may satisfy the requirement of this section by publishing its reports in a metropolitan newspaper of general circulation even though such newspaper may be located in the adjoining State from the recipient government.

(b) *Publicity.*—Each recipient government, at the same time as required for publication of reports under paragraph (a) of this section, shall advise the news media, including minority and bilingual news media, within its geographic area of the publication of its reports made pursuant to paragraph (a) of this section, and shall provide copies of such reports to the news media on request.

(c) *Public inspection.*—Each recipient government shall make available for public inspection a copy of each of the reports required under § 51.11(a) and (b) and information as necessary to support the information and data submitted on each of those reports. Such detailed information shall be available for public inspection at a specified location during normal business hours. The Secretary may prescribe additional guidelines concerning the form and content of such information.

**§51.14 Reports to the Bureau of the Census.**

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Secretary) for data and information relevant to the determination of entitlement allocations. Failure

of any recipient government to so comply may place in jeopardy the prompt receipt by it of entitlement funds.

### Subpart C—Computation and Adjustment of Entitlement

#### § 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments thereto payable under this part will be the latest and most complete data supplied by the Bureau of the Census or such other sources of data as in the judgment of the Secretary will provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available as necessary to permit an equitable allocation.

(2) Payment to units of local government for which the Secretary has not received an address confirmation will be delayed until proper information is available to the Secretary.

(3) Where the Secretary determines that the data provided by the Bureau of the Census or the Department of Commerce are not current enough, or are not comprehensive enough, or are otherwise inadequate to provide for equitable allocations he may use other data, including estimates. The Secretary's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the FEDERAL REGISTER.

(c) *Special rule for 6 month entitlement periods.* For entitlement periods which encompass only one-half of a year, the adjusted taxes and intergovernmental transfers of any unit of local government for that half-year will be estimated to be one-half of the annual amounts.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county, each part of such unit is treated for allocation purposes as a separate unit of government,

and the adjusted taxes, and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of such part bears to the population of the entirety of such unit.

#### § 51.21 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, such amounts as determined will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in such fund shall be calculated, and that ratio multiplied by the expenditure or transfer of moneys from such fund to the school fund shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in such fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Secretary shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local governments to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No unit of government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

#### § 51.22 Date for determination of allocation.

(a) *In general.* Pursuant to the provisions of § 51.20 (a) and (b) (3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period is to be calculated shall be made not later than the day immediately preceding the beginning of the entitlement period. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for an entitlement period shall be determined by the Secretary as soon as practicable and shall be publicized by notice in the FEDERAL REGISTER.

(b) *Time limitation and minimum adjustment.* If prior to the date determined by the Secretary pursuant to paragraph (a) of this section, it is established to the satisfaction of the Secretary by factual evidence and documentation that the data used in the computation of an allocation is erroneous and, if corrected, would result in an increase or decrease of an entitlement of \$200 or more of entitlement funds, an adjustment will be made.

(c) *Adjusted taxes and intergovernmental transfers.* The dates for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year of such unit ending during the 12 months prior to July 1, 1971. If a more recent period is used, it shall be such fiscal year that can be uniformly assembled for all units of government prior to the beginning of the affected entitlement period.

[38 FR 9132, Apr. 10, 1973, as amended at 39 FR 8324, Mar. 5, 1974]

#### § 51.23 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during an entitlement period which were not taken into account during the initial allocation shall, if not within the scope of paragraph (d) of this section, affect such allocation or payments in a manner consistent with the following provisions:

(1) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of an entitlement of a unit of local government under the Act, occurring prior to the beginning of an entitlement period shall result in an alteration to the entitlement of that unit if brought to the attention of the Bureau of the Census within 60 days (or by June 30, 1973, in case of the third entitlement period) after the beginning of such entitlement period.

(2) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of entitlement of a unit of local government under the Act, occurring during an entitlement period shall not result in a change to the entitlement of that unit until the next entitlement period. However, payment tendered to such unit for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence during an entitlement period shall first be eligible for an entitlement allocation for the next entitlement period. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government to which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided*, That such unit of local

government is in the process of winding up its governmental affairs or a successor unit of local government has legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Secretary because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist.

(d) *Limitations on adjustment for annexations.* (1) Annexations by units of local government having a population of less than 5,000 on April 1, 1970, shall not affect the entitlement of any unit of local government for an entitlement period unless the Secretary determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(2) Annexations of areas with a population of less than 250 or less than 5 percent of the population of the gaining government, shall not affect the entitlement of any unit of local government.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that such change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and such certification shall be submitted to the Bureau of the Census.

#### § 51.24 Waiver of entitlement; nondelivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government may waive its entitlement for any entitlement period: *Provided*, The chief executive officer with the consent of the governing body of such unit notifies the Secretary that the entitlement payments for a past, current, or the next beginning entitlement period are being waived. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be so notified by the Secretary

and, unless the attempted waiver is rescinded within 30 days of the date of such notice, it shall be given effect. However, in no event will a notice of waiver be given effect for an entitlement period which is subsequent to the next beginning entitlement period. The entitlement waived, and adjustments thereto, if any, resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next highest unit of government eligible to receive entitlement funds in that State in which the units of government waiving entitlement is located. However, if the governing body of an Indian tribe or Alaskan native village waives its entitlement for any period, the rules relating to distributions within county areas (pursuant to section 108(b)(4) of the Act) are to apply to the distribution within a county area as if such tribe or village were not in existence for that period. A waiver of entitlement by a unit of local government or Indian tribe or Alaskan native village shall be deemed irrevocable for the entitlement period or periods to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to provide required reports, assurances or certifications pursuant to Subpart B is subject to a determination of having constructively waived its entitlement funds for the affected entitlement period through inaction. The Secretary, prior to such a determination, shall notify non-responsive recipient governments of their noncompliance and that their entitlement funds are being temporarily withheld pursuant to § 51.3(b). If compliance is not achieved within a reasonable period of time, which shall not be less than 30 days, the Secretary shall notify the affected recipient governments that if compliance is not achieved within a period of 30 days after mailing such notice, a constructive waiver of entitlement funds will be determined to have occurred. Entitlement funds thus constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement funds for any entitlement period which are returned by the U.S. Postal Service to the

Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

[38 FR 9132, Apr. 10, 1973, as amended at 38 FR 18668, July 13, 1973; 39 FR 8324, Mar. 5, 1974]

#### § 51.25 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data or for any other reason, the Secretary shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage of the total entitlement funds for any entitlement period as in his judgment shall be necessary to insure that there will be sufficient funds available so that all recipient governments will receive their full entitlements. Such reserve shall be known as the Obligated Adjustment Reserve and amounts remaining in that reserve will accumulate until the liabilities of the Trust Fund are discharged or sufficiently diminished to permit an allocation to recipient governments.

(b) *Adjustment to entitlement payments.* Adjustment to an entitlement of a recipient government will ordinarily be effected through alteration to entitlement payments unless there is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. In such case the Secretary may demand that the funds received by the recipient government in excess of its entitlement be immediately repaid to the Trust Fund of the Department of the Treasury.

[38 FR 9432, Apr. 10, 1973, as amended at 38 FR 18669, July 13, 1973; 39 FR 8324, Mar. 5, 1974]

#### § 51.26 State must maintain transfers to local governments.

(a) *General rule.* The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(1) The average of the aggregate amounts transferred by the State government out of its own sources during such period (or during that States fiscal year ending on or immediately prior to the end of such period) and the preceding entitlement period (or such fiscal year) to all units of local government (as defined in § 51.2(m) in such State, is less than,

(2) The similar aggregate amount for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period).

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government out of its own sources during such period to units of local government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and the State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* In those States that do not have an accounting system providing an audit trail for all funds concerned (from own source to final application) in intergovernmental transfer to units of local government (such as those States in which intergovernmental transfers to units of local government are made from a commingled fund with no identification as to specific revenue source), the following formula may be applied by the Secretary to establish the base year intergovernmental transfers to units of local government from own sources and to generally monitor level of accordance with the maintenance provision of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovern

mental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b) (2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b) (1) of this section.

(4) Should the application of this formula during any entitlement period indicate nonmaintenance, for example, should

a State's calculated own source average aggregate intergovernmental transfers to units of local government (over the appropriate periods) be less than such transfers as calculated for the base period, the difference (as defined in paragraph (b) (3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Secretary that the fact or amount of nonmaintenance as determined by application of the formula is inaccurate.

(c) *Alternative procedure.* If the Secretary shall determine that application of the formula set forth in paragraph (b) of this section in a particular case provides an inaccurate or unfair measure of transfer effort, then any formula, procedure, or method deemed equitable by the Secretary, may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, the aggregate amount taken into account under paragraph (a) (2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amount which for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period) it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a) (2) of this section shall be reduced to the extent of the larger of—

(1) An amount equal to the amount of the taxes collected by reason of the exer-

cise of such new taxing authority by such local governments, or

(2) An amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(f) *Special rule for period beginning July 1, 1973.* In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (a)(1) of this section shall be treated as being the 1-year period beginning July 1, 1972, or that State's fiscal year which ends prior to June 30, 1973.

(g) *Special rule for period beginning July 1, 1976.* In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (a)(1) of this section for the preceding entitlement period and the aggregate amount taken into account under paragraph (a)(2) of this section shall be one-half of the amounts which (but for this paragraph (g)) would be taken into account.

(h) *Report by Governor.* Pursuant to the authority of § 51.10 and in order to effect compliance with this section, the Governor of each State shall submit to the Secretary within 90 days after the end of the State's fiscal year, on a form to be provided, the aggregate transfers from own source revenues to units of local government for those entitlement periods or that State's fiscal years specified on the report:

- (1) The State's own source revenues.
- (2) The State's total revenues.
- (3) The State's own source transfers to units of local government.
- (4) The State's total transfers to units of local government.

(i) *Reduction in entitlement.* If the Secretary has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and op-

portunity for hearing to the State. If, thereafter, he determines that paragraph (a) of this section requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(j) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section (after any judicial review) shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

[38 FR 9132, Apr. 10, 1973, as amended at 38 FR 18669, July 13, 1973]

### § 51.27 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among county areas, or among units of local government (other than county governments, Indian tribes, and Alaskan native villages): (1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local governments; or, (2) on the basis of the population multiplied by the relative income factors of such areas or units of local government; or, (3) on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a) or 108(b) (2) and (3) of the Act, shall notify the Secretary of such law not later than 90 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall:

(1) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;

(2) Apply uniformly throughout the State; and

(3) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local govern-

ment allocation formula, or both, such alteration may be made only once and must be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

[38 FR 9132, Apr. 10, 1973, as amended at 39 FR 8324, Mar. 5, 1974]

**§ 51.28 Adjustment of data factors.**

The data factors and data definitions used in computing entitlements under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question those data factors by providing the Department with factual documentation demonstrating evidence of error. If the Secretary determines that any data factors used were erroneous, necessary adjustments will be made. Data factors which are used for more than one entitlement period will be subject to challenge and adjustment only for the first entitlement period in which they were used.

**§ 51.29 Adjustment of maximum and minimum per capita entitlement; 100 percent criterion.**

(a) *County area maximum and minimum per capita entitlement—*(1) *In general.* Pursuant to section 108(b) (6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a) (2) of this

section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local government (other than a county government)—*(1) *In general.* Except as provided below, the per-capita amount allocated to any unit of local government (other than a county government) shall be not less than 20-percent, nor more than 145-percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that unit's adjusted taxes and transfers.

(c) *One hundred-percent criterion.* If the amounts allocated to recipient governments of a State do not total 100 percent of the amount allocated to that State, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to recipient governments of a State total 100 percent of the amount allocated to that State.

**Subpart D—Prohibition and Restrictions on Use of Funds**

**§51.30 Matching funds.**

(a) *In general.* Entitlement funds may not be used, directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal program. The indirect use of entitlement funds to match Federal funds is defined to mean the allocation of entitlement funds to a nonmatching expenditure and thereby releasing or displacing local funds which are used for the purpose of matching Federal funds. This prohibition on use of entitlement funds as matching funds applies to Federal programs where Federal funds are required to be matched



by non-Federal funds and to Federal programs which allow matching from either Federal or non-Federal funds.

(b) *Secondary recipients.* The prohibition of paragraph (a) applies to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of this section by a secondary recipient shall constitute a violation by the recipient government and the penalty provided by subparagraph (f) of this section shall be imposed on the recipient government.

(c) *Certification required.* Pursuant to § 51.12, the chief executive officer of each recipient government must certify to the Secretary that entitlement funds received by it have not been used in violation of this section.

(d) *Increased State or local government revenues.* No recipient government shall be determined to have used funds in violation of paragraph (a) of this section with respect to any funds received for any entitlement period (or during its fiscal year) to the extent that net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the 1-year period beginning July 1, 1971 (or its fiscal year ending during the same period). In the case of the entitlement periods of 6 months, one-half of such net revenues shall be measured.

(e) *Presumptions of compliance.* No recipient government shall be determined to have used entitlement funds in violation of the indirect prohibition of paragraph (a) of this section to the extent that:

(1) The expenditure of entitlement funds was accompanied by an aggregate increase in nonmatching funds expenditures.

(2) The receipt of entitlement funds permitted that government to reduce taxes: *Provided*, Nonentitlement revenue is sufficient to cover all matching funds contributions.

(3) The matching funds contribution in question is accounted for by an in-kind contribution which was not financed directly or indirectly with entitlement funds.

(f) *Determination by Secretary of the Treasury.* If the Secretary has reason to

believe that a recipient government has used entitlement funds to match Federal funds in violation of the Act, the Secretary shall give such government notice and opportunity for hearing. If the Secretary determines that such government has, in fact, used funds in violation of this section, he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent entitlement payments to that government an amount of entitlement funds equal to the funds used in violation of this section or, if this method is impracticable, the Secretary may refer the matter to the Attorney General for appropriate civil action.

(g) *Use of entitlement funds to supplement Federal grant funds.* The prohibition on use of entitlement funds contained in paragraph (a) of this section does not prevent the use of entitlement funds to supplement other Federal grant funds. For example, if expenditures for a project exceed the amount available from non-Federal funds plus matched Federal funds, the recipient government may use entitlement funds to defray the excess costs: *Provided, however*, That the entitlement funds are not used to match other Federal funds: *And Provided further*, That in the case of a unit of local government, the use of entitlement funds to supplement Federal grants is restricted to the category of expenditures as set forth in § 51.31.

#### § 51.31 Permissible expenditures.

(a) *In general.* Entitlement funds received by units of local government may be used only for priority expenditures. As used in this part, the term "priority expenditures" means:

(1) Ordinary and necessary maintenance and operating expenses for—

(i) Public safety (including law enforcement, fire protection, and building code enforcement);

(ii) Environmental protection (including sewage disposal, sanitation, and pollution abatement);

(iii) Public transportation (including transit systems and streets and roads);

(iv) Health;

(v) Recreation;

(vi) Libraries;  
 (vii) Social services for the poor or aged; and  
 (viii) Financial administration, and  
 (2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for nonpriority expenditures which are defined as any expenditures other than those included in paragraph (a) (1) and (2) of this section. Pursuant to § 51.12, the chief executive officer of each unit of local government must certify to the Secretary that entitlement funds received by it have been used only for priority expenditures as required by the Act.

(b) *Use of entitlement funds for debt retirement.* The use of entitlement funds for the repayment of debt is a permissible expenditure provided that:

(1) Entitlement funds are not used to pay any interest incurred because of the debt,

(2) The debt was originally incurred for a priority expenditure purpose as defined in this section,

(3) The actual expenditure from the proceeds of the indebtedness (i.e., for materials, contractors, etc.) was made on or after January 1, 1972 (the beginning of the first entitlement period),

(4) The actual expenditures from the proceeds of the indebtedness were not in violation of any restrictions enumerated in this subpart.

(c) *Effect of noncompliance.* In the case of a unit of local government which uses an amount of entitlement funds for other than priority expenditures as defined in paragraph (a) of this section, it will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended in violation of paragraph (a) of this section, unless such amount of entitlement funds is promptly repaid to the trust fund of the local government after notice by the Secretary and opportunity for corrective action.

#### § 51.32 Discrimination.

(a) *Discrimination prohibited.* No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or

activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient government, or by any unit of government or private contractor receiving entitlement funds from the recipient government. "Funded in whole or in part with entitlement funds" means that entitlement funds in any amount have been transferred from the recipient government's trust fund to an identifiable administrative unit and disbursed in a program or activity.

(b) *Specific discriminatory actions prohibited.* (1) a recipient government may not, under any program or activity to which the regulations of this section may apply, directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

(i) Deny any service or other benefit provided under the program or activity.

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others under the program or activity.

(iii) Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity.

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient government may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or

activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient government in determining the site or location of facilities may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, national origin, or sex from, the benefits of an activity or program; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4) A recipient government shall not be prohibited by this section from taking any action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient government from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) *Assurances required.* Pursuant to § 51.00(b), each Governor of a State or chief executive officer of a unit of local government shall include, in the assurances to the Secretary required by that section, a statement that all programs and activities funded in whole or in part by entitlement funds will be conducted in compliance with the requirements of this section. Such assurances shall be in a form prescribed by the Secretary.

(d) *Complaints and investigations.* Any person who believes himself, or any specific class of persons who believe themselves, to be subjected to discrimination prohibited by this section, may by himself or by a representative file with the Secretary a written report setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. The Secretary shall advise the chief executive officer of the

recipient government of the receipt of such report. If the Secretary has reason to believe that the report shows a recipient government has failed to comply with the provisions of this part, he will cause a prompt investigation to be made with respect to the facts and circumstances alleged in the report and with respect to the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipient government. No representative of a recipient government nor any of its agencies shall intimidate, threaten, coerce, or discriminate against any person or class of persons because of testimony, assistance or participation in an investigation, proceeding, or hearing under this section.

(e) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this section and of the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(f) *Procedure for effecting compliance.* (1) Whenever the Secretary determines that a recipient government has failed to comply with this section, he shall notify the chief executive officer of such recipient government and the Governor of the State in which such government is located of the noncompliance and shall request the Governor to secure compliance. If within a reasonable time, not to exceed 60 days, the Governor fails, or refuses to secure compliance, the Secretary is authorized: (i) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; (ii) to exercise the powers and functions and the administrative remedies provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (iii) to take such other action as may be authorized by law.

(2) No action to effect compliance with this section by any other means authorized by law shall be taken by the Department until:

(i) The Secretary has determined that compliance cannot be secured by voluntary means, and the recipient government has been notified of such determination; and

(ii) The expiration of at least 10 days

from the mailing of such notice to the recipient government. During this period of at least 10 days, additional efforts may be made to persuade the recipient government to comply with this regulation and to take such corrective action as may be appropriate.

(3) An order pursuant to Title VI of the Civil Rights Act of 1964 terminating or refusing to grant or continue entitlement payments or demanding the forfeiture, repayment or withholding of entitlement funds shall become effective only after the procedures in paragraph (f)(1) of this section have been complied with and:

(i) The Secretary has advised the recipient government of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after such notice prescribed in this section, and after opportunity for hearing, of a failure by the recipient government to comply with a requirement imposed by or under this part;

(iii) The action has been approved by the Secretary; and

(iv) Thirty days have elapsed after the Secretary has filed with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action; and

(v) The forfeiture or repayment of entitlement funds shall be limited to the particular recipient government as to whom a finding of noncompliance is made with this section and shall be limited to the program or activity in which such noncompliance has been so found. The amount of entitlement funds as are forfeited by the recipient government shall be reflected in a downward adjustment to future entitlement payments and shall be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require repayment of such amount to the United States. Furthermore, the Secretary shall withhold payment of all entitlement funds to a recipient government for which there has been

a finding of noncompliance until such time that he is satisfied that such government will comply with the provisions of this section.

(g) *Delegation.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of this section (other than the review of initial decision of the administrative law judge) including the achievement of effective coordination within the executive branch in the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

(h) *Hearing procedure.* Whenever a procedure which requires due notice and opportunity for hearing is involved by the Secretary to effect compliance under this section, the procedural regulations promulgated in Subpart F of this part shall govern.

#### § 51.33 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government which receives entitlement funds under the Act shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of \$2,000.00 and of which 25 percent or more of the cost is paid out of its entitlement funds: (1) Will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a-276a-5); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Request for wage determination.* In situations where the Davis-Bacon standards are applicable, the recipient government must ascertain the U.S. Department of Labor wage rate determination for each intended project and insure that the wage rates and the contract clauses required by 29 CFR 5.5 and 29 CFR 5a.3 are incorporated in the contract specifications. The recipient government must also satisfy itself that the bidder is made aware of his labor stand-

ards responsibilities under the Davis-Bacon Act. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional office of the U.S. Department of Labor at least 30 days before the invitation for bids or, in case of construction covered by general wage rate determinations, the appropriate rate may be obtained from the FEDERAL REGISTER.

(c) *Government employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.40(a).

[38 FR 9132, Apr. 10, 1973, as amended at 39 FR 8324, Mar. 5, 1974]

#### § 51.34 Restriction on expenditures by Indian tribes and Alaskan native villages.

Indian tribes and Alaskan native villages as defined in § 51.2 are required to expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made. Expenditures which are so restricted will not constitute a failure to comply with the requirement of § 51.32(a).

### Subpart E—Fiscal Procedures and Auditing

#### § 51.40 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate such funds within 24 months from the end of the entitlement period to which the

check is applicable. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest earned thereon, must be obtained by application to the Secretary. Such application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Secretary may grant such extensions of time as in his judgment appear necessary or appropriate.

(c) Provide for the expenditure of entitlement funds in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(d) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Secretary to be prepared therefrom,

(2) Document compliance with the matching funds certification, and

(3) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part.

The accounting for entitlement funds shall at a minimum employ the same fiscal accounting and internal audit procedures as are used with respect to expenditures from revenues derived from the recipient government's own sources.

(e) Provide to the Secretary and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Secretary may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

[38 FR 9132, Apr. 10, 1973, as amended at 39 FR 8325, Mar. 5, 1974]

#### § 51.41 Auditing and evaluation; scope of audits.

(a) *In general.* The Secretary shall provide for such auditing and evaluation as may be necessary to insure that ex-

penditures of entitlement funds by recipient governments comply with the requirements of the Act and regulations of this part. Detail audits, reviews and evaluations may be made on a sample basis through inspection of records, and of reports required under subpart B of this part, and through on-site examinations, to determine whether the recipient governments have properly discharged their financial responsibilities and to evaluate compliance with the Act and the regulations of this part.

(b) *Scope of audits.* The scope of such audits may include a review of entitlement fund transactions, accounts and reports. In addition, the scope of such audits may include an examination of the following areas:

(1) Compliance with assurances made under § 51.10.

(2) Compliance with the requirement that States must maintain transfers to local governments as required by section 107(b) of the Act.

(3) Compliance with the reporting requirements and accuracy of the reports submitted to the Secretary as set forth in Subpart B of this part.

(4) Accuracy of fiscal data reported to the Bureau of the Census.

(5) Accuracy of the public records required under § 51.13(c).

(c) *Reliance on State and local government audits.* It is the intention of the Secretary to rely to the maximum extent possible on audits of recipient governments by State and local government auditors and independent public accountants. The Secretary may accept such audits when in his judgment this may reasonably be done consistent with the provisions of the Act and regulations of this part, and provided:

(1) Audits are performed in accordance with generally accepted auditing standards. Recipient governments are encouraged to have such audits performed, to the extent they consider practicable, in accordance with standards for the *Audit of Governmental Organizations, Programs, Activities and Functions* issued by the Comptroller General in June 1972.

(2) Audits include coverage as set forth in paragraph (b) of this section.

(3) Audit workpapers and related au-

dit reports are retained for 3 years after the issuance of the audit report, and are available upon request to the Secretary and the Comptroller General or to their representatives; and,

(4) Audit reports shall contain a clear statement of the auditor's findings as to compliance or noncompliance with the requirements of the Act and the regulations of this part. In the event that an auditor is unable to review compliance with all of the provisions of paragraph (b), the audit report shall reflect those areas in which a compliance review was not performed. Audit reports which disclose or otherwise indicate a possible failure to comply substantially with any requirements of the Act or the regulations of this part will be submitted to the Secretary by the Governor or chief executive officer.

#### **Subpart F—Proceedings or Reduction in Entitlement, Withholding, or Repayment of Funds**

##### **§ 51.50 Scope of subpart.**

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for hearing.

##### **§ 51.51 Liberal construction.**

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

##### **§ 51.52 Reasonable notice and opportunity for hearing.**

Whenever the Secretary has reason to believe that a recipient government has failed to comply with any section of the Act or of the provisions of this part, and that repayment, withholding, or reduction in the amount of an entitlement of a recipient government is required, he shall give reasonable notice and opportunity of hearing to such government prior to the invocation of any sanction under the Act.

**§ 51.53 Opportunity for compliance.**

Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. If the recipient government is a unit of local government, regarding the alleged violation shall be transmitted by the Secretary to the Governor of the State in which the unit of local government is located.

**§ 51.54 Institution of proceeding.**

A proceeding to require repayment of funds to the Secretary, or to withhold funds from subsequent entitlement of a recipient government, shall be instituted by the Secretary by a complaint which names the recipient government as the respondent.

**§ 51.55 Contents of complaint.**

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it is able to prepare a defense to the charges.

(b) *Demand for answer.* Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision, by default will be rendered against the respondent in the event it fails to file its answer as required.

**§ 51.56 Service of complaint and other papers.**

(a) *Complaint.* The complaint or a true copy thereof may be served upon the respondent by first-class mail or by certified mail, return receipt requested;

or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.57(a).

**§ 51.57 Answer; referral to administrative law judge.**

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true; nor shall a respondent state that it is without sufficient information to form a belief when in fact it possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of

such allegation need be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under paragraph (a) of this section, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge shall make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Secretary may file a reply in his discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

#### § 51.58 Supplemental charges.

If it appears that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

#### § 51.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may

order or authorize amendment of the pleading to conform to the evidence: *Provided*, The party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

#### § 51.60 Representation.

A respondent or proposed respondent may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Secretary shall be represented by the General Counsel of the Treasury.

#### § 51.61 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

- (1) Administer oaths and affirmations;
- (2) Make ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

- (3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

- (4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

- (5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

- (6) Take or authorize the taking of depositions;

- (7) Receive and consider oral or written arguments on facts or law;

- (8) Hold or provide for the holding of conferences for the settlement or sim-



plification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial findings and decision.

#### § 51.62 Hearings.

(a) *In general.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Failure to appear.* If a respondent fails to appear at the hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make his findings and decision against the respondent by default.

(c) *Waiver of hearing.* A respondent may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive hearing. In such event the administrative law judge may make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

#### § 51.63 Stipulations.

The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

#### § 51.64 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the

Courts of the United States, shall be admissible and controlling as far as possible: *Provided that*, the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.65 and the deposition may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original provided that such documents, records and papers are evidenced as the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (b) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

#### § 51.65 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for gen-

eral purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

#### § 51.66 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings, but not arguments of counsel unless otherwise ordered by the administrative law judge. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he (or she) will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his (or her) ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a Government contract reporter copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy

thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483 (a) ).

#### § 51.67 Proposed findings and conclusions.

Except in cases where a respondent has failed to answer the complaint or has failed to appear at the hearing, or has waived the hearing, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

#### § 51.68 Initial decision of the administrative law judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, but in no event later than 30 days after the submission of proposed findings and conclusions if they are submitted, the administrative law judge shall make his initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions therefor, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and shall provide for one of the following orders:

(a) An order that the respondent pay over to the Secretary an amount equal to 110 percent of any amount determined to be improperly expended by the respondent in violation of § 51.31 relating to priority expenditures; or

(b) An order that the respondent pay over to the Secretary an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(c) An order that the Secretary withhold from subsequent entitlement payments to the respondent an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(d) An order that the entitlement of a recipient government be reduced and the amount of such reduction to be with-

held from subsequent entitlement payments; or

(e) An order dismissing the proceedings.

**§ 51.69 Certification and transmittal of record and decision.**

After reaching his initial decision, the administrative law judge shall certify to the complete record before him and shall immediately forward the certified record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

**§ 51.70 What constitutes record.**

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

**§ 51.71 Procedure on review of decision of administrative law judge.**

(a) *Appeal to the Secretary.* Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to him.

(b) *Appeal by the Director of the Office of Revenue Sharing.* In the absence of an appeal by the respondent, the Director of the Office of Revenue Sharing may, on his own motion, within 45 days after the initial decision, serve on the respondent by certified mail a notice that he will appeal the decision to the Secretary, for review. Within 30 days from such notice, the Director of the Office of Revenue Sharing or his counsel will file with the Secretary his exceptions to the initial decision and his supporting reasons

therefor. A copy of the exceptions shall be transmitted to the respondent or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or his counsel. Upon the filing of a reply brief, if any, the Secretary will make the final agency decision on the record of the administrative law judge.

(c) *Absence of appeal.* In the absence of either exceptions by the respondent or a notice of appeal by the Director of the Office of Revenue Sharing within the time set forth in paragraphs (a) and (b) of this section, or a review initiated by the Secretary on his own motion within the time allowed to the Director of the Office of Revenue Sharing, the initial decision of the administrative law judge shall constitute the final decision of the Department.

**§ 51.72 Decision of the Secretary.**

On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making his decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

**§ 51.73 Effect of order of repayment or withholding of funds.**

In case the final order against the respondent is for repayment of funds to the United States, such amount as determined by the order shall be repaid upon request by the Secretary. To the extent that the respondent fails to do so upon request of the Secretary, the Secretary shall withhold from subsequent entitlement payments to the respondent in amount equal to the amount not repaid. In case the final order against the respondent is for the withholding of an amount of subsequent entitlement payments, such amounts as ordered shall be withheld by the Director of the Office of Revenue Sharing after notice to the chief executive officer of the recipient govern-

ment that if it fails to take corrective action within 60 days after receipt of the notice, further entitlement payments will be withheld until the Secretary is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part. In every case in which the respondent is a unit of local government, a copy of the final order and notice shall be submitted to the Governor of the State in which the respondent is located.

**§ 51.74 Publicity of proceedings.**

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available to inspection by the public as provided for and in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law

judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director of the Office of Revenue Sharing and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

**§ 51.75 Judicial review.**

Actions taken under administrative proceedings pursuant to this subpart shall be subject to judicial review pursuant to section 143 of Subtitle C of the Act. If a respondent desires to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

**TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT**  
**CHAPTER 14H—BUREAU OF INDIAN AFFAIRS,**  
**DEPARTMENT OF THE INTERIOR**

**PART 14H-1—GENERAL**

Sec.

14H-1.000 Scope of part.

**Subpart 14H-1.0—Regulation System**

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**Subpart 14H-1.4—Procurement Responsibility and Authority**

14H-1.402 Authority of contracting officers.  
14H-1.404 Selection, designation and termination of designation of contracting officers.  
14H-1.404-2 Designation.  
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Sec.  
14H-1.404-4 Assignment of duties to contracting officers.  
14H-1.451 Delegation and redelegation of authority and designation of contracting officers.  
14H-1.451-2 Designation of contracting officer positions.  
14H-1.451-6 Limitation of contracting officer authority.

**AUTHORITY:** The provisions of this Part 14H-1 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**SOURCE:** The provisions of this Part 14H-1 appear at 34 F.R. 13659, Aug. 26, 1969, unless otherwise noted.

**§ 14H-1.000 Scope of part.**

(a) This part establishes a system for the codification and publication of policies and procedures of the Bureau of Indian Affairs (Bureau) regulations which implement, supplement or deviate from the Federal Procurement Regulations (FPR) and Interior Procurement Regulations (IPR), when appropriate.

(b) The Federal Procurement Regulations are published as Chapter 1 of this title. The Interior Procurement Regulations which implement and supplement the FPR are published as Chapter 14 of this title. The Bureau Procurement Regulations which implement and supplement the FPR and IPR are published as Chapter 14H of this title. It is the basic policy of the Bureau to apply the Federal Procurement Regulations and the Interior Procurement Regulations. Thus, as to most elements of the procurement process, substantive guidelines will be found by reference to those regulations in the order mentioned.

**Subpart 14H-1.0—Regulation System**

**§ 14H-1.001 Scope of subpart.**

This subpart establishes the Bureau of Indian Affairs Procurement Regulations (BIAPR) and states their relationship to the Federal Procurement Regulations (FPA) and the Interior Procurement Regulations (IPR).

**§ 14H-1.002 Purpose.**

This subpart establishes for the Bureau uniform policies and procedures related to procurement of personal property, nonpersonal services, construction, and real property by lease.

**§ 14H-1.003 Authority.**

BIAPR are prescribed by the Commissioner of Indian Affairs (Commissioner)

under the Federal Property and Administrative Services Act of 1949, as amended, or other authority specifically cited.

**§ 14H-1.004 Applicability.**

BIAPR apply to all procurement activities of the Bureau to the extent indicated, unless otherwise provided by law.

**§ 14H-1.006 Issuance.**

**§ 14H-1.006-1 Code arrangement.**

BIAPR are issued in the Code of Federal Regulations as Chapter 14H of Title 41, Public Contracts and Property Management. BIAPR contain the alphabetical letter "H" which identifies the Bureau and which immediately follows the Code (14) which identifies the Department as illustrated in IPR.

**§ 14H-1.006-2 Publication.**

BIAPR will be published in the FEDERAL REGISTER and in separate looseleaf form on salmon colored paper.

**§ 14H-1.007 Arrangement.**

**§ 14H-1.007-1 General plan.**

The general plan, numbering system, and nomenclature used in FPR and IPR, which conform to the FEDERAL REGISTER standards, are adhered to in BIAPR.

**§ 14H-1.007-2 Numbering.**

For ease in identification, the numbering system and part, subpart, and section titles used in FPR, and in IPR are also used in BIAPR.

**§ 14H-1.007-3 Citation.**

Using this section as an example BIAPR should be cited as, "BIAPR 14H-1.007-3." When referred to formally in official documents such as legal briefs, the section should be cited as "41 CFR 14H-1.007-3."

**§ 14H-1.008 Agency implementation.**

(a) It is Bureau policy to utilize FPR and IPR to the fullest extent possible in the conduct of all procurement matters. The Bureau will conform to this policy by avoiding implementation, supplementation, or deviation from FPR and IPR unless compelling reasons exist for doing so.

(b) FPR and IPR shall be applicable as issued unless implemented, supplemented, or deviated from in BIAPR.

(c) Matters which pertain to procurement but are primarily for internal guidance whether or not related to the material in FPR and IPR, will be issued as Bureau of Indian Affairs Procurement Instructions (BIAPI). To simplify usage of BIAPI in conjunction with FPR, IPR and BIAPR the same system and format used for those regulations will be followed. A yellow colored paper will be used for BIAPI.

**§ 14H-1.009 Deviation.**

**§ 14H-1.009-2 Procedure.**

Deviations from FPR and IPR by the Bureau will be kept to a minimum and controlled as follows:

(a) Requests for approval of deviations may be submitted by contracting officers to the Commissioner. The requests shall cite the specific part of FPR, or IPR, from which it is desired to deviate, shall set forth the nature of the deviations, and shall give the reasons for the action requested. Requests considered meritorious will be submitted for approval as provided for in IPR. No deviation shall be effective until approved.

**Subpart 14H-1.2—Definition of Terms**

**§ 14H-1.205 Procuring activity.**

"Procuring activity" means the Bureau of Indian Affairs in which authority to contract for the procurement of personal property, nonpersonal services, and construction is vested.

**§ 14H-1.206 Head of the procuring activity.**

"Head of the procuring activity" means the Commissioner.

**Subpart 14H-1.3—General Policies**

**§ 14H-1.302 Procurement sources.**

**§ 14H-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.**

Contracting Officers shall refer all proposed contracts with Government employees or business concerns substantially owned or controlled by Government employees to the Commissioner.

Approval of the Assistant Secretary for Administration will be requested in those instances where the Commissioner determines it would be in the Government's interest to enter into such a contract.

#### **Subpart 14H-1.4—Procurement Responsibility and Authority**

##### **§ 14H-1.402 Authority of contracting officers.**

The authority under this section shall be exercised in conformity with § 14H-1.451.

##### **§ 14H-1.404 Selection, designation, and termination of designation of contracting officers.**

The authority under this section shall be exercised in conformity with § 14H-1.451.

##### **§ 14H-1.404-2 Designation.**

The authority under this section shall be exercised in conformity with § 14H-1.451.

##### **§ 14H-1.404-3 Termination of designation.**

The requirements of this section shall be exercised in conformity with § 14H-1.451.

##### **§ 14H-1.404-4 Assignment of duties to contracting officers.**

The requirements of this section shall be exercised in conformity with § 14H-1.451.

##### **§ 14H-1.451 Delegation and redelegation of authority and designation of contracting officers.**

Except for such limitations as are prescribed elsewhere, the authority delegated to the Commissioner with respect to all matters relating to contracting and procurement of supplies, services, and construction, except the authority to

designate contracting officer positions, is hereby redelegated to the contracting officer positions designated in § 14H-1.451-2.

##### **§ 14H-1.451-2 Designation of contracting officer positions.**

(a) Each of the following organizational titles are designated as contracting officer positions:

(1) Headquarters Office Officials:

(i) Commissioner.

(ii) Deputy Commissioner.

(iii) Director of Administrative Services.

(iv) Chief, Division of Contracting Services.

(v) Property and Supply Officer.

(vi) Chief, Division of Plant Design and Construction, Albuquerque, N. Mex.

(vii) Chief, Indian Technical Assistance Center, Denver, Colo.

(viii) Property and Supply Officer, Field Support Services Office, Albuquerque, N. Mex.

(2) Area Office officials:

(i) Area Director.

(ii) Deputy Area Director.

(iii) Assistant Area Director, Minneapolis and Sacramento Area Offices.

(iv) Assistant Area Director for Administration.

(v) Area Administrative Officer.

(vi) Area Property and Supply Officer.

(vii) Contract Engineering Adviser, Portland, Oreg.

(viii) Administrative Officer and Special Representative, Seattle, Wash.

[34 F.R. 13659, Aug. 26, 1969, as amended at 37 F.R. 13531, July 11, 1972]

##### **§ 14H-1.451-6 Limitation of contracting officer authority.**

Contract Engineering Adviser, Portland, Oreg., is limited to the approval of nonnegotiated construction contracts not exceeding \$25,000.

[35 F.R. 11398, July 16, 1970]

## TITLE 42—PUBLIC HEALTH

### CHAPTER I—PUBLIC HEALTH SERVICE

#### PART 36—INDIAN HEALTH

##### Subpart A—Scope and Definitions

- Sec.  
36.1 Purpose and effect.  
36.2 Meaning of terms.

##### Subpart B—Availability of Services to Individuals in Programs (Including Facilities Constructed or Supported With Tribal Funds) Operated for Indian Beneficiaries By the Public Health Service

- 36.11 Services available.  
36.12 Persons to whom services will be provided.  
36.13 Charges to Indian beneficiaries for services provided in Public Health Service facilities or by Public Health Service personnel.  
36.14 Nonbeneficiaries; emergency care and treatment; charges.

##### Subpart C—Contract Services

- Sec.  
36.21 Availability of contract services.

##### Subpart D—Contagious and Infectious Diseases

###### TUBERCULOSIS

- 36.30 Applicability.  
36.31 Commitment of Indians afflicted with tuberculosis.  
36.32 Retention of custody; utilization of law enforcement authorities.  
36.33 Discharge of patients.  
36.34 Transfer of patients.

AUTHORITY: The provisions of this Part 36 issued under sec. 3, 68 Stat. 674; 42 U.S.C. 2003, 42 Stat. 208, sec. 1, 68 Stat. 674; 25 U.S.C. 13, 42 U.S.C. 2001, unless otherwise noted.

SOURCE: The provisions of this Part 36 appear at 21 F.R. 9833, Dec. 12, 1956, unless otherwise noted.

##### Subpart A—Scope and Definitions

###### § 36.1 Purpose and effect.

(a) The regulations in this part establish the general principles to be followed in the discharge of this Department's responsibilities for continuation and improvement of the Indian health services. Officers and employees of the Department will be guided by these policies in exercising discretionary authority with respect to the matters covered.

(b) The Surgeon General of the Public Health Service is authorized to adopt, and from time to time revise or add, administrative instructions relating to methods or procedures appropriate to implementing these principles, or for their supplementation as to matters not covered, including instructions providing for the continuation or appropriate modification of practices and procedures previously observed in the provision of Indian health services in particular jurisdictions.

###### § 36.2 Meaning of terms.

When used in this part, the term:

(a) "Indian health program" includes the Alaska Native Health Services.

(b) "Indian" includes Indians in the continental United States, and Indians, Aleuts and Eskimos in Alaska.

(c) "Jurisdiction" shall have the same geographical meaning as in Bureau of Indian Affairs usage.

(d) "Bureau of Indian Affairs" means the Bureau of Indian Affairs, Department of the Interior.

##### Subpart B—Availability of Services to Individuals in Programs (Including Facilities Constructed or Supported With Tribal Funds) Operated for Indian Beneficiaries by the Public Health Service

###### § 36.11 Services available.

Within the limits of available funds, facilities, and personnel, the Public Health Service will make available, within the area served by the local facility, hospital and medical and dental care, including outpatient services and services of mobile clinics and public health nurses, and preventive care including immunizations and health examinations of special groups, such as school children.



**§ 36.12 Persons to whom services will be provided.**

(a) *In general.* (1) Services will be made available, as medically indicated, to persons of Indian descent belonging to the Indian community served by the local facilities and program, and non-Indian wives of such persons.

(2) Generally, an individual may be regarded as within the scope of the Indian health and medical service program if he is regarded as an Indian by the community in which he lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction.

(b) *Doubtful cases.* (1) In case of doubt as to whether an individual applying for care is within the scope of the program, the Medical Officer in Charge shall obtain from the appropriate Bureau of Indian Affairs officials in the jurisdiction information pertinent to his determination of the individual's continuing relationship to the Indian population group served by the local program.

(2) If the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending identification as an Indian beneficiary.

(c) *Priorities when funds, facilities, or personnel are insufficient to provide the indicated volume of services.* Priorities for care and treatment, as among individuals who are within the scope of the program, will be determined on the basis of relative medical need and access to other arrangements for obtaining the necessary care.

**§ 36.13 Charges to Indian beneficiaries for services provided in Public Health Service facilities or by Public Health Service personnel.**

(a) *In general.* In order to make the most effective use of funds and facilities available for needed health and medical services, individual Indians who are clearly able to pay the costs of hospital care (and of other major items of service specified in instructions of the Surgeon General) will be encouraged to do so, and services may be conditioned upon

payment in appropriate cases. No charge may be made for immunizations, health examination of school children or similar preventive services, or for the hospitalization of Indian patients for tuberculosis.

(b) *Amount of charges.* Payment may be requested in accordance with a schedule of charges established for the jurisdiction by the Area Medical Officer, but such charges may in no case exceed the cost of providing the service, as determined by the Surgeon General or in accordance with instructions issued by him.

(c) *Circumstances under which payment may be requested; Authority of the Medical Officer in Charge.* Whenever it is established to the satisfaction of the Medical Officer in Charge, from information available from the local Bureau of Indian Affairs officers or from other sources, that an Indian applying for care for himself or his family is able to meet the scheduled charge for the needed care without impairing his prospects for economic independence, he may be asked to pay the scheduled charge. Charges may be reduced in individual cases, or payment may be waived and needed services may nevertheless be provided if, in the judgment of the Medical Officer in Charge, the health objectives in the area served will be advanced thereby.

[21 F.R. 9833, Dec. 12, 1956, as amended at 22 F.R. 6412, Aug. 10, 1957]

**§ 36.14 Nonbeneficiaries; emergency care and treatment; charges.**

(a) In case of emergency, as an act of humanity, nonbeneficiaries of the Service may be provided temporary care and treatment in hospitals and facilities of the Service which are operated for Indian beneficiaries.

(b) Persons referred to in paragraph (a) of this section who, as determined by the medical officer in charge, are able to defray the cost of their care and treatment shall be charged for such care and treatment at the following rates (which shall be deemed to constitute the entire charge in each instance): In the case of hospitalization, at the current interdepartmental reimbursable per diem rate as established by the Bureau of the Budget; and in the case of outpatient

treatment, at rates established by the Surgeon General.

(Interpret or apply sec. 322(d), 58 Stat. 696, sec.

501, 65 Stat. 290; 42 U.S.C. 249(d), 31 U.S.C. 483a) [24 F.R. 10108, Dec. 15, 1959]

### Subpart C—Contract Services

#### § 36.21 Availability of contract services.

Availability of contract services to individual Indian beneficiaries will be governed by the terms of the contract.

### Subpart D—Contagious and Infectious Diseases

#### TUBERCULOSIS

AUTHORITY: The provisions of this Subpart D also issued under sec. 1, 38 Stat. 584; 25 U.S.C. 198.

SOURCE: The provisions of this Subpart D appear at 25 F.R. 10063, Oct. 21, 1960, unless otherwise noted.

#### § 36.30 Applicability.

The regulations in this subpart relative to the commitment of Indians afflicted with tuberculosis apply only to Indian reservations where effective procedures for the commitment of persons afflicted with tuberculosis are not available under the laws of the State in which the reservation is located.

#### §36.31 Commitment of Indians afflicted with tuberculosis.

(a) Upon a determination by a tribal court or other Indian court of competent jurisdiction that an Indian within its jurisdiction has tuberculosis in a communicable form and that under applicable tribal law such Indian may be committed to a hospital or other place for medical treatment, the Area Medical Officer in Charge may, upon request of such court, certify that facilities and services of the Public Health Service are available to provide necessary medical treatment for the Indian if he determines in accordance with applicable instructions of the Division of Indian Health that the health of the afflicted Indian or that of other persons requires the isolation or quarantine of the Indian in a hospital or other place of treatment.

(b) If, after such certification the court commits the afflicted Indian to the

custody of the Public Health Service, the Medical Officer in Charge may accept such commitment and transport and admit the Indian to any hospital or institution operated by the Public Health Service for the medical care and treatment of tuberculosis patients whether within or without the jurisdiction of the court.

(c) An Indian admitted to a facility of the Public Health Service pursuant to this subpart shall be subject to the rules and regulations of the Public Health Service applicable to patients and to the facility.

#### § 36.32 Retention of custody; utilization of law enforcement authorities.

(a) The Medical Officer in Charge having custody of a patient whose commitment has been accepted under this subpart is authorized to employ such means as may be necessary for the retention of custody of, and the provision of necessary treatment to, the afflicted Indian including the provision of attendants during periods of transportation, until such time as the patient is discharged.

(b) When necessary to retain custody of the patient the Medical Officer in Charge is authorized to call upon the police force of the Bureau of Indian Affairs, of the tribe, or of the State, as may be appropriate.

#### § 36.33 Discharge of patients.

When the Medical Officer in Charge of a medical facility to which an afflicted Indian has been admitted is satisfied that the disease is inactive and not in a communicable stage, he shall discharge the patient: *Provided*, That he may discharge the patient or release him on parole under such conditions as he deems appropriate if he is satisfied that such action would not endanger the health of the patient or the health of other persons.

#### § 36.34 Transfer of patients.

(a) A patient admitted to a facility of the Service, pursuant to this subpart, may be transferred to any other facility of the Service within or without the jurisdiction of the committing court for necessary care and treatment.

(b) A patient admitted to a facility of the Service under this subpart may

be transferred to a hospital operated by a State or local government which is authorized to receive him within or without the jurisdiction of the committing court.

(c) The transfer of a patient authorized in this section shall be made only if such transfer is in the judgment of the Medical Officer in Charge in the best interest of the health of the patient.

## TITLE 43—PUBLIC LANDS: INTERIOR

### Subtitle A—Office of the Secretary of the Interior

#### PART 1—PRACTICES BEFORE THE DEPARTMENT OF THE INTERIOR

##### Sec.

- 1.1 Purpose.
- 1.2 Definitions.
- 1.3 Who may practice.

AUTHORITY: The provisions of this Part 1 issued under sec. 5, 23 Stat. 101; 43 U.S.C. 1464.

SOURCE: The provisions of the Part 1 appear at 29 F.R. 143, Jan. 7, 1964, unless otherwise noted.

##### § 1.1 Purpose.

This part governs the participation of individuals in proceedings, both formal and informal, in which rights are asserted before, or privileges sought from, the Department of the Interior.

##### § 1.2 Definitions.

As used in this part the term:

(a) "Department" includes any bureau, office, or other unit of the Department of the Interior, whether in Washington, D.C., or in the field, and any officer or employee thereof;

(b) "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative;

(c) "Practice" includes any action taken to support or oppose the assertion of a right before the Department or to support or oppose a request that the Department grant a privilege; and the term "practice" includes any such action whether it relates to the substance of, or to the procedural aspects of handling, a particular matter. The term "practice" does not include the preparation or filing of an application, the filing without comment of documents prepared by one other than the individual making the filing, obtaining from the Department information that is available to the public generally, or the making of inquiries respecting the status of a matter pending before the Department. Also, the term "practice" does not include the representation of an employee who is the subject of disciplinary, loyalty, or other personnel administrative proceedings.

##### § 1.3 Who may practice.

(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

\* \* \* \* \*

#### PART 2—RECORDS AND TESTIMONY

##### Sec.

- 2.1 Inspection.
- 2.2 Determinations as to availability of records.
- 2.3 Declassification of classified documents.
- 2.4 Charges.
- 2.5 Opinions in adjudication of cases; administrative manuals.
- 2.6 Compulsory process.
- 2.7 Testimony of employees.
- 2.8 Definition.

##### Appendix.

AUTHORITY: The provisions of this Part 2 issued under 64 Stat. 402, 65 Stat. 290, 80 Stat. 383; 43 U.S.C. 1460, 31 U.S.C. 483a, 5 U.S.C. 552.

##### § 2.1 Inspection.

Records of the Department of the Interior which are available to the public may be inspected or copied by any person during the normal business hours at the office in which the records are located. Requests to inspect or to obtain copies of records shall be handled as promptly as possible with due regard for the dispatch of other public business. While there is no general requirement that requests to inspect must be in writing, applicants may be required to file written requests in instances in which such action will assist in the search for the records sought or in the orderly filing of such requests. A request to inspect or to obtain copies of a record must contain a reasonably specific description of the records sought.

[32 F.R. 9974, July 7, 1967]

##### § 2.2 Determinations as to availability of records.

(a) Section 552 of Title 5, U.S. Code,

as amended by Public Law 90-23 (the act codifying the "Public Information Act") requires that identifiable agency records be made available for inspection. Subsection (b)<sup>1</sup> of section 552 exempts several categories of records from the general requirement but does not require the withholding from inspection of all records which may fall within the categories exempted. Accordingly, no request made of a field office to inspect a record shall be denied unless the head of the office or such higher field authority as the head of the bureau may designate shall determine (1) that the record falls within one or more of the categories exempted and (2) either that disclosure is prohibited by statute or Executive order or that sound grounds exist which require the invocation of the exemption. A request to inspect a record located in the headquarters office of a bureau shall not be denied except on the basis of a similar determination made by the head of the bureau or his designee, and a request made to inspect a record located in a major organizational unit of the Office of the Secretary shall not be denied except on the basis of a similar determination by the head of that unit. Officers and employees of the Department shall be guided by the "Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act" of June 1967.

<sup>1</sup> Subsection (b) of section 552 provides that:

(b) This section does not apply to matters that are—

(1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) An applicant may appeal from a determination that a record is not available for inspection to the Solicitor of the Department of the Interior, who may exercise all of the authority of the Secretary of the Interior in this regard. The Deputy Solicitor may decide such appeals and may exercise all of the authority of the Secretary in this regard.

(c) All replies of officers or employees of the Department of the Interior to written requests denying a member of the public an opportunity to inspect or receive copies of records of the Department shall advise the applicant, in writing, of the reason for the denial and of the right of appeal to the Solicitor. A copy of all such replies shall be forwarded to the U.S. Department of the Interior, Office of the Solicitor, Washington, D.C. 20240.

[32 F.R. 9974, July 7, 1967, as amended at 37 F.R. 15865, Aug. 8, 1972]

### § 2.3 Declassification of classified documents.

(a) *Request for classification review.*

(1) Requests for a classification review of a document of the Department of the Interior pursuant to section 5(c) of Executive Order 11652 (37 F.R. 5209, March 10, 1972) and section III B of the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 F.R. 10053, May 1972) shall be made in accordance with the procedures established by this section.

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 11652 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Records and Protective Services, Office of Management Operations, U.S. Department of the Interior, Washington, D.C. 20240.

(3) Requests need not be made on any special form, but shall, as specified in the executive order, describe the document with sufficient particularity to enable identification of the document requested with expenditure of no more than a reasonable amount of effort.

(4) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with 31 U.S.C. 483a, which is implemented by § 2.4 and the requester will be notified.

(b) *Action of requests for classification review.* (1) The Chief, Division of Records and Protective Services, shall, unless the request is for a document over 30 years old, assign the request to the bureau having custody of the requested records for action. In the case of requests for declassification of records in the custody of the Office of the Secretary and less than 30 years old, the request shall be processed by the Chief, Division of Records and Protective Services. Requests for declassification of documents over 30 years old shall be referred directly to the Archivist of the United States. The bureau which has been assigned the request, or the Chief, Division of Records and Protective Services, in the case of requests assigned to him, shall immediately acknowledge the request in writing. Every effort will be made to complete action on each request within thirty (30) days of its receipt. If action cannot be completed within thirty (30) days, the requester shall be so advised.

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Committee on Classification of Security Information, U.S. Department of the Interior, Washington, D.C. 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

(c) *Form of decision and appeal to Committee on Classification of Security Information.* In the event that the bureau to which a request is assigned or the Chief, Division of Records and Protective Services, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material

cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Committee on Classification of Security Information, U.S. Department of the Interior, Washington, D.C. 20240. An appeal shall include a brief statement as to why the requester disagrees with the decision which he is appealing. The Department Committee on Classification of Security Information shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to over-rule previous determinations in whole or in part when, in its judgment, continued protection is no longer required.

(d) *Appeal to Interagency Classification Review Committee.* Whenever the Department of the Interior Committee on Classification of Security Information confirms a determination for continued classification, it shall so notify the requester and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, D.C. 20500.

(e) *Suggestions and complaints.* Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Committee for Classification of Security Information U.S. Department of the Interior, Washington, D.C. 20240.

[37 F.R. 26594, Dec. 14, 1972]

#### § 2.4 Charges.

(a) No charge shall be made for the inspection of any record available pursuant to the provisions of section 2.4. No charge shall be made in connection with requests to inspect identifiable records in those instances involving no search or only a nominal search for the records. In those instances in which a request to inspect a record requires more than a nominal search, a charge shall be made (in accordance with the policy of Bureau of the Budget Circular A-25,

"User Charges") which covers the cost of the service.

(b) Except as otherwise provided in this section, a charge shall be made for a copy of a record. Such charge shall be at a rate that recovers the full cost of rendering the service in accordance with the policy of Bureau of the Budget Circular A-25, "User Charges."

(c) A charge of 25 cents may be made for each certificate or verification attached to authenticated copies of records furnished to the public.

(d) No charge shall be made for furnishing unauthenticated copies of any opinions, regulations, or instructions reproduced for gratuitous distribution.

(e) No charge shall be made for the making or verifying of copies of records which are required for official use by the officers of any branch of the Government.

(f) No charge shall be made for furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department.

(g) A copy of the transcript of a hearing before a hearing board in an adverse action or grievance proceeding shall be furnished without charge to the employee for whom the hearing was held.

(h) Money received from the collection of charges fixed under this section shall be deposited in the Treasury to the credit of the appropriation current and chargeable for the cost of furnishing the copies.

(i) Copies of records may be provided free:

(1) To press, radio, television, and newsreel representatives for dissemination to the general public.

(2) To donors with respect to the original of their gift, individuals or associations having an official voluntary or cooperative relationship to an agency in rendering assistance toward its work, or national governments and international agencies when furnishing the service without charge is an appropriate courtesy.

(3) To agencies of State and local governments which are carrying on a function related to that of the Federal agency involved, when furnishing the service will help to accomplish an objective of the Federal agency.

(4) When furnishing the service free saves costs or yields income equal to the

direct costs of the agency providing the service. This category includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(5) When furnishing the service free is in conformance with generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees.

(6) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial benefits to which they may be entitled (e.g., veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government).

[32 F.R. 9974, July 7, 1967. Redesignated at 37 F.R. 26594, Dec. 14, 1972]

## § 2.5 Opinions in adjudications of cases; administrative manuals.

(a) (1) Copies of final decisions and orders issued on and after July 1, 1970, in the following categories of cases are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203:

(i) Contract appeals;

(ii) Appeals from decisions rendered by departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;

(iii) Appeals from orders and decisions issued by departmental officials and administrative law judges in proceedings relating to mine health and safety; and

(iv) Appeals from orders and decisions of administrative law judges in Indian probate matters other than those involving estates of Indians of the Five Civilized Tribes and Osage Indians.

(2) Copies of final opinions and orders issued in the following categories of cases are available for inspection and copying in the Docket and Records Section, Office of the Solicitor, Interior Building Washington, D.C. 20240:

(i) Tort claims decided in the headquarters office of the Office of the Solicitors, and appeals from decisions of Regional Solicitors or Field Solicitors on tort claims;

(ii) Irrigation claims under Public Works Appropriation Acts (e.g., 79 Stat. 1103) or 25 U.S.C. section 388 decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors or irrigation claims;

(iii) Appeals under § 2.2 respecting availability of records;

(iv) Appeals from decisions of officials of the Bureau of Indian Affairs, and Indian enrollment appeals; and

(v) Appeals from decisions of officers of the Bureau of Land Management and of the Geological Survey in proceedings relating to lands or interests in land, contract appeals, and appeals in Indian probate proceedings, issued prior to July 1, 1970.

(3) An Index-Digest is issued by the Department. All decisions, opinions and orders issued in the categories of cases described in subdivisions (i), (ii), and (iii) of subparagraph (1) of this paragraph (that is, contract appeals, land appeals, and mine health and safety appeals), are covered in the Index-Digest; in addition, the Index-Digest covers the more important decisions, opinions and orders in the remaining categories of cases described in subdivision (iv) of subparagraph (1) of this paragraph and in subdivisions (i), (ii), (iii), and (iv) of subparagraph (2) of this paragraph, and the more important opinions of law issued by the Office of the Solicitor. The Index-Digest is available for use by the public in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, in the Docket and Records Section. Office of the Solicitor, Interior Building, Washington, D.C. 20240, and in the offices of the Regional Solicitors and Field Solicitors. Selected decisions, opinions and orders are published in a series entitled "Decisions of the United States Department of the Interior" (cited as I.D.), and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(4) Copies of final opinions and orders

issued by Regional Solicitors on tort claims and irrigation claims, and copies of final opinions and orders on appeals in Indian probate proceedings issued by Regional Solicitors prior to July 1, 1970, are available for inspection and copying in their respective offices. Copies of final opinions and orders issued by Field Solicitors on tort claims are available for inspection and copying in their respective offices.

(b) (1) Copies of final decisions and orders issued prior to July 1, 1970, on appeals to the Director, Bureau of Land Management, and by hearing examiners of the Bureau of Land Management, in proceedings relating to lands and interests in land are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the offices of the Departmental administrative law judges.

(2) Copies of final decisions, opinions and orders issued on and after July 1, 1970, by departmental administrative law judges in all proceedings before them are available for inspection and copying in their respective offices and in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

(3) Copies of final decisions, opinions and orders issued by administrative law judges in Indian probate proceedings are available for inspection and copying in their respective offices.

(c) Copies of final opinions and orders issued in cases pertaining to applications for subsidies for the construction of fishing vessels are available for inspection and copying in the Branch of Grants and Loans, Bureau of Commercial Fisheries, Washington, D.C.

(d) Copies of final opinions and orders issued by the Oil Import Appeals Board are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

(e) The Department Manual is available for inspection in the Departmental Library, Interior Building, Washington, D.C., and at each of the regional offices of bureaus of the Department. The administrative manuals of those bureaus which have issued such documents are available for inspection at the headquar-



ters offices and at the regional offices of the bureaus.

[32 F.R. 9974, July 7, 1967, as amended at 35 F.R. 14697, Sept. 22, 1970; 37 F.R. 2677, Feb. 4, 1972. Redesignated at 37 F.R. 26594, Dec. 14, 1972]

### § 2.6 Compulsory process.

(a) If the production of any record of the Department is sought by compulsory process and if it is determined, in accordance with the provisions of § 2.2 that the record should not be disclosed, the person making such determination shall immediately report the matter to the Solicitor. The person to whom the compulsory process is directed shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary of the Interior, is prohibited by the regulations in this part.

(b) The Solicitor of the Department of the Interior and the Deputy Solicitor may exercise all of the authority of the Secretary of the Interior under this section.

[32 F.R. 9974, July 7, 1967. Redesignated at 37 F.R. 26594, Dec. 14, 1972]

### § 2.7 Testimony of employees.

(a) An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government without the permission of the head of the bureau, or his designee, or of the Secretary of the Interior, or his designee. If the head of a bureau, or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Solicitor for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending the receipt of instructions from the Secretary, on the ground that testimony is prohibited by the regulations in this part. Pending instructions from the Secretary, or his designee, an officer or employee in the Office of the Secretary shall follow the same procedure.

(b) Any person (including a public agency) wishing an officer or employee of the Department to testify, in a judicial or administrative proceeding concerning a matter related to the business of the Government may be required to submit a statement setting forth the

interest of the litigant and the information with respect to which the testimony of the officer or employee of the Department is desired, before permission to testify will be granted under this section.

(c) The Solicitor of the Department of the Interior and the Deputy Solicitor may exercise all of the authority of the Secretary of the Interior under this section.

[32 F.R. 9974, July 7, 1967. Redesignated at 37 F.R. 26594, Dec. 14, 1972]

### § 2.8 Definition.

As used in the regulations in this part, the term "bureau" includes the other Departmental offices.

#### APPENDIX

##### OFFICE OF HEARINGS AND APPEALS—FIELD OFFICES

Departmental Administrative Law Judges:

- (1) Sacramento, Calif., Federal Building.
- (2) Salt Lake City, Utah, Federal Building. Administrative Law Judges (Indian Probate):
- (1) Phoenix, Ariz., Arizona Title Annex Building.
- (2) Sacramento, Calif., Federal Building.
- (3) Denver, Colo., Denver Federal Center.
- (4) Minneapolis, Minn., Buzza Building.
- (5) Billings, Mont., Federal Building and Courthouse.
- (6) Gallup, N. Mex., V.E.M. Building.
- (7) Tulsa, Okla., U.S. Post Office and Federal Office Building.
- (8) Portland, Oreg., Federal Building.

##### OFFICE OF THE SOLICITOR—FIELD OFFICES

###### *Anchorage Region*

Regional Solicitor; Anchorage, Alaska, Federal Building.

Field Solicitor; Juneau, Alaska, U.S. Post Office and Courthouse.

###### *Denver Region*

Regional Solicitor; Denver, Colo., Denver Federal Center

Field Solicitor; Aberdeen, S. Dak., Federal Building.

Field Solicitor; Albuquerque, N. Mex., Federal Building and Courthouse.

Field Solicitor; Billings, Mont., Federal Building and Courthouse.

Field Solicitor; Cheyenne, Wyo., Joseph C. O'Mahoney Federal Center.

Field Solicitor; Twin Cities, Minn., Federal Building, Fort Snelling.

Field Solicitor; Santa Fe, N. Mex., U.S. Courthouse.

###### *Los Angeles Region*

Regional Solicitor; Los Angeles, Calif., 7759 Federal Building.

Field Solicitor; Phoenix, Ariz., Arizona Title Annex Building.

Field Solicitor; Reno, Nev., 2004 Federal Building—U.S. Courthouse.

###### *Philadelphia Region*

Regional Solicitor; Philadelphia, Pa., Second Bank Building.

###### *Portland Region*

Regional Solicitor; Portland, Oreg., Federal Building.

Field Solicitor; Boise, Idaho, Federal Building—U.S. Courthouse.

Field Solicitor; Ephrata, Wash., Reclamation Building.

*Sacramento Region*

Regional Solicitor; Sacramento, Calif., Federal Building.  
 Field Solicitor; San Francisco, Calif., 450 Golden Gate Avenue.  
 Attorney-Advisor; Palm Springs, Calif., 587 South Palm Canyon Drive.

*Salt Lake City Region*

Regional Solicitor; Salt Lake City, Utah, Federal Building.

*Tulsa Region*

Regional Solicitor; Tulsa, Okla., Federal Building, U.S. Post Office and Courthouse.  
 Field Solicitor; Amarillo, Tex., 1106 Herring Plaza.  
 Field Solicitor; Anadarko, Okla., 121 Northwest Second Street.  
 Trial Attorney; Durant, Okla., U.S. Post Office and Courthouse.  
 Field Solicitor; Muskogee, Okla., Federal Building.  
 Field Solicitor; Pawhuska, Okla., c/o Osage Indian Agency.  
 Field Solicitor; Elberton, Ga., First National Bank Building.

[35 F.R. 14697, Sept. 22, 1970. Redesignated at 37 F.R. 26594, Dec. 14, 1972]

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## PART 4 — DEPARTMENT HEARINGS AND APPEALS PROCEDURES

### Subpart A—General; Office of Hearings and Appeals

#### § 4.1 Scope of authority; applicable regulations.

The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary. Principal components of the Office include (a) a Hearings Division comprised of hearing examiners who are authorized to conduct hearings in cases required by law to be conducted pursuant to 5 U.S.C. sec. 554, hearings in Indian probate matters, and hearings in other cases arising under statutes and regulations of the Department, including rule making hearings, and (b) Appeals Boards, shown below, with administrative jurisdiction and special procedural rules as indicated. General rules applicable to all types of proceedings are set forth in Subpart B of this part. Therefore, for information as to applicable rules, reference should be made to the special rules in the subpart relating to the particular type of proceeding, as indicated, and to the general

rules in Subpart B of this part. Wherever there is any conflict between one of the general rules in Subpart B of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern. Reference should be made also to the governing laws, substantive regulations and policies of the Department relating to the proceeding. In addition, reference should be made to Part 1 of this subtitle which regulates practice before the Department of the Interior.

\* \* \* \* \*

(2) *Board of Indian Appeals.* The Board decides finally for the Department appeals to the head of the Department from orders and decisions of hearing examiners in Indian probate matters. Jurisdiction of the Board includes, but is not limited to, authority of the Secretary relating to Indian probate proceedings other than those involving estates of the Five Civilized Tribes and Osage Indians. Special regulations applicable to proceedings before the Board are contained in Subpart D of this part.

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### Subpart B—General Rules Relating to Procedures and Practice

#### § 4.20 Purpose.

In the interest of establishing and maintaining uniformity to the extent feasible, this subpart sets forth general rules applicable to all types of proceedings before the Hearing Division and the several Appeals Boards of the Office of Hearings and Appeals.

#### § 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately.

(b) *Exhaustion of administrative remedies.* No decision which at the time of

its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. sec. 704, unless it has been made effective pending a decision on appeal in the manner provided in paragraph (a) of this section.

(c) *Finality of decision.* No further appeal will lie in the Department from a decision of the Director or an Appeals Board of the Office of Hearings and Appeals. Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding concerned, and must state with particularity the error claimed. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies.

#### § 4.22 Documents.

(a) *Filing of documents.* A document is filed in the Office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation of an Appeals Board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents, book, records, papers, etc., re-

ceived in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceeding. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an Appeals Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(d) *Record address.* Every person who files a document for the record in connection with any proceeding before the Office of Hearings and Appeals shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the matter is pending of any change in address, giving the docket or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required herein, he will not be entitled to notice in connection with the proceedings.

(e) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other non-business days shall be excluded in the computation.

(f) *Extensions of time.* (1) The time

for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

#### § 4.23 Transcript of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of transcripts to be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Hearings and Appeals employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents. If the reporting is done pursuant to a contract between the reporter and the Department of the Interior agency or office which is involved in the proceeding, or the Office of Hearings and Appeals, fees for transcripts will be at rates established by the contract.

#### § 4.24 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of an Appeals Board, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in other proceedings, the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision on appeal or after a hearing shall be based upon any record, statement, file or similar document which is not open to inspection

by the parties to the appeal or hearing.

(b) *Official notice.* Official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.

#### § 4.25 Oral argument.

The Director or an Appeals Board may, in their discretion, grant an opportunity for oral argument.

#### § 4.26 Subpoena power and witness provisions generally.

(a) *Compulsory attendance of witnesses.* The administrative law judge, on his own motion, or on written application of a party, is authorized to issue subpoenas requiring the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. Subpoenas will be issued on a form approved by the Director. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) *Application for subpoena.* Where the file has not yet been transmitted to the administrative law judge, the application for a subpoena may be filed in the office of the officer who made the decision appealed from, or in the office of the Bureau of Land Management in which the complaint was filed, in which cases such offices will forward the application to the examiner.

(c) *Fees payable to witnesses.* (1) Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witness appears.

(2) Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly

subpoenaed as a witness on behalf of such party. This paragraph does not apply to Government employees who are called as witnesses by the Government.

#### § 4.27 Standards of conduct.

(a) *Inquiries.* All inquiries with respect to any matter pending before the Office of Hearings and Appeals shall be directed to the Director, the Chief Administrative Law Judge, or the Chairman of the appropriate Board.

(b) *Ex parte communications.* There shall be no communication between any party and a member of the Office of Hearings and Appeals concerning the merits of a proceeding, or an appeal, unless such communication (if written) is also furnished to the other party, or (if oral) is made in the presence of the other party. The Board shall refuse to receive, except as part of the appeals record, any information having a substantial bearing upon an appeal from persons who do not represent a party in the appeal but have an interest in the decision to be rendered.

(c) *Disqualification.* An administrative law judge or Board member shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If, prior to a decision of an administrative law judge or an Appeals Board, there is filed in good faith by a party an affidavit of personal bias or disqualification with substantiating facts, and the administrative law judge or Board member concerned does not withdraw, the Board or the Director, as appropriate, shall determine the matter of disqualification.

#### § 4.28 Interlocutory appeals.

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from an Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

#### § 4.29 Remands from courts.

Whenever any matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate Appeals Board a report recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

#### § 4.30 Information required by forms.

Whenever a regulation of the Office of Hearings and Appeals requires a form approved or prescribed by the Director, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

\* \* \* \* \*

### Subpart D—Special Rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals

**AUTHORITY:** The provisions of this Subpart D issued under secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; 25 U.S.C. 372, 373, 374, 373a, 373b.

[Cross reference: See Subpart A for the authority, jurisdiction and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Indian Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B]

#### DETERMINATION OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS.

##### SCOPE OF REGULATIONS; DEFINITIONS; GENERAL AUTHORITY OF EXAMINERS

#### § 4.200 Scope of regulations.

The regulations in this subpart govern the procedures in settlement of trust estates of deceased Indians who die possessed of trust property, except deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and the members of any tribe organized under 25 U.S.C. sec. 476 (1964), to the extent that the constitution, bylaws, or charter of such tribe may be inconsistent with this subpart.

## § 4.201 Definitions.

As used in this subpart:

(a) The term "Secretary" means the Secretary of the Interior or his authorized representative;

(b) The term "Board" means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by Examiners on petitions for rehearing or reopening, and allowance of attorney fees;

(c) The term "Commissioner" means the Commissioner of Indian Affairs or his authorized representative;

(d) The term "Superintendent" means the Superintendent or other officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority;

(e) The terms "agency" and "Indian agency" mean the Indian agency or any other designated office in the Bureau of Indian Affairs having jurisdiction over trust property;

(f) "Hearing Examiner" (hereinafter called Examiner) means any employee of the Office of Hearings and Appeals upon whom authority has been conferred by the Secretary to conduct hearings in accordance with the regulations in this subpart;

(g) The term "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative;

(h) The term "Department" means the Department of the Interior;

(i) The term "parties in interest" means any presumptive or actual heir, any beneficiary under a will, and any party asserting a claim against a deceased Indian's estate;

(j) The term "minor" means an individual who has not reached his majority as defined by the laws of the State where the deceased's property is situated;

(k) The words "child" or "children" include adopted child or children;

(l) The words "will" and "last will and testament" include codicils thereto;

(m) The term "trust property" means real or personal property title to which is in the United States for the benefit of an Indian. In this subpart "restricted property" (real or personal property

held by an Indian which he may not alienate without the consent of the Secretary or his authorized representative) is treated as if it were trust property, and conversely trust property is treated as restricted property.

## § 4.202 General authority of Examiners.

Examiners shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§ 4.205(b) and 4.271; approve or disapprove wills of deceased Indians disposing of trust property; and allow or disallow creditors' claims against estates of deceased Indians.

## § 4.203 Determinations as to nonexistent persons and other irregularities of allotments.

(a) Examiners shall hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an Examiner determines under paragraph (a) of this section that a trust patent did issue to an existing person or that separate persons did receive the allotments under consideration and any one of them is deceased, without having had his estate probated, he shall proceed as provided in § 4.202.

(c) If an Examiner determines under paragraph (a) of this section that a person did not exist or that there were more than one allotment issued to the same person, he shall issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

## § 4.204 Presumption of death.

(a) Examiners shall receive evidence on and determine the issue of whether persons, by reason of unexplained absence, are to be presumed dead.

(b) If an Examiner determines that an Indian person possessed of trust property is to be presumed dead, he shall proceed as provided in § 4.202.

## § 4.205 Escheat.

Examiners shall determine whether Indian holders of trust property have died intestate without heirs and—

(a) With respect to trust property

other than on the public domain, shall order the escheat of such property in accordance with 25 U.S.C. sec. 373a (1964).

(b) With respect to trust property on the public domain, shall submit to the Board of Indian Appeals the records thereon, together with their recommendations as to the disposition of said property under 25 U.S.C. 373b (1964).

**§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.**

In cases where the right and duty of the Government to hold property in trust depends thereon, Examiners shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of United States citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

**§ 4.207 Compromise settlement.**

(a) If during the course of the probate of an estate it shall develop that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the Examiner upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the Examiner may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers shall supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the Examiner shall issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order shall be construed as any other order of distribution establishing title in heirs and devisees and shall not be construed as a partition or sale transaction within the provisions of Part 121, Title 25, Code of Federal Regulations. If land titles are to be transferred, the necessary deeds shall be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the Examiner shall settle the issues and enter his order as if no agreement had been attempted.

(d) Examiners are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

**COMMENCEMENT OF PROBATE PROCEEDINGS**

**§ 4.210 Commencement of probate.**

(a) Within the first 7 days of each month, each Superintendent shall prepare and furnish to the appropriate Examiner a list of the names of all Indians who have died and whose names have not been previously reported.

(b) Within 90 days of receipt of notice of death of an Indian who died owning trust property, the Superintendent having jurisdiction thereof shall commence the probate of the trust estate by filing with the appropriate Examiner all data shown in the records relative to the family of the deceased and his property. The data shall include but is not limited to:

(1) A copy of the death certificate or its equivalent;

(2) Data for heirship findings and family history, certified by the Superintendent, on a form approved by the Director, Office of Hearings and Appeals, such data to contain:

(i) The facts and alleged facts of deceased's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs and other

known parties in interest, including known creditors;

(iii) Information on whether the relationship of the probable heirs to the deceased arose by marriage, blood, or adoption;

(iv) The names, relationships to the deceased, and last known addresses of beneficiaries and attesting witnesses when a will or purported will is involved; and

(v) If will beneficiaries are not probable heirs of the deceased, the names of the tribes in which they are members;

(3) A certified inventory of the trust real and personal property wherever situated, in which the deceased had any right, title or interest at the time of his death (including all moneys and credits in a trust status whether in the form of bonds, undistributed judgment funds, or any other form and the source of each fund in the account), showing both the total estimated value of the real property and the estimated value of the deceased's interest therein, and the amount and names and addresses of parties having an approved incumbrance against the estate;

(4) The original and copies of all wills in the Superintendent's custody, if any; the original and copies of codicils to and revocations of wills, if any; and any paper, instrument, or document that purports to be a will;

(5) The Superintendent shall transmit to the Examiner all creditors' and other claims which have been filed and, thereafter, he shall transmit all additional claims immediately upon the filing thereof.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24813, Dec. 23, 1971]

#### §4.211 Notice.

(a) An Examiner may receive and hear proofs at a hearing to determine the heirs of a deceased Indian or probate his will only after he has caused notice of the time and place of the hearing to be posted at least 20 days in five or more conspicuous places in the vicinity of the designated place of hearing, and he may cause postings in such other places and reservations as he deems appropriate. A certificate showing the date and place of posting shall

be signed by the person or official who performs the act.

(b) The Examiner shall serve or cause to be served a copy of the notice on each party in interest reported to the Examiner and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The Examiner shall cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, shall be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice shall arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the Examiner's office unclaimed by the addressee.

#### § 4.212 Contents of notice.

(a) In the notice of hearing, the Examiner shall specify that at the stated time and place he will take testimony to determine the heirs of the deceased person (naming him) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice shall name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice shall cite this subpart as the authority and jurisdiction for holding the hearing, and shall inform all persons having an interest in the estate of the decedent, including persons having claims or accounts against the estate, to be present at the hearing or their rights may be lost by default.

(b) The notice shall state further that the hearing may be continued to an-



other time and place. A continuance may be announced either at the original hearing by the Examiner or by an appropriate notice posted at the announced place of hearing on or prior to the announced hearing date and hour.

DEPOSITIONS, DISCOVERY, AND PREHEARING  
CONFERENCE

§ 4.220 Production of documents for inspection and copying.

(a) At any stage of the proceeding prior to the conclusion of the hearing, a party in interest may make a written demand, a copy to be filed with the Examiner, upon any other party to the proceeding or upon a custodian of records on Indians or their trust property, to produce for inspection and copying or photographing, any documents, papers, records, letters, photographs, or other tangible things not privileged, relevant to the issues which are in the other party's or custodian's possession, custody, or control. Upon failure of prompt compliance, the Examiner may issue an appropriate order upon a petition filed by the requesting party. At any time prior to closing the record, the Examiner upon his own motion, after notice to all parties, may issue an order to any party in interest or custodian of records for the production of material or information not privileged, and relevant to the issues.

(b) Custodians of official records shall furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control thereof.

§ 4.221 Depositions.

(a) *Stipulation.* Depositions may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When a party in interest files a written application, the Examiner may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a hearing. The application shall be in writing and shall set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of that person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which shall be at least 20 days after the date of the filing of the application; and

(4) The reasons why such deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application the Examiner determines that the deposition should be taken, he shall order its taking. The order shall be served upon all parties in interest and shall state:

(1) The name of the deponent;

(2) The time and place of the examination which shall not be less than 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent shall appear before the Examiner or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or someone in his presence. An applicant who requests the taking of a person's deposition shall make his own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and shall be read to or by him, unless such examination and reading are waived by the deponent or by all other parties in interest. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties in interest by stipulation waive

the signing, or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent, the officer shall sign it and state on the record the fact of the waiver, or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed, unless the Examiner holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and shall personally deliver or mail the same by certified or registered mail to the Examiner.

(h) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a hearing if the Examiner finds that the witness is absent and his presence cannot be readily obtained, that the evidence is otherwise admissible, and that circumstances exist that make it desirable in the interest of fairness to allow the deposition to be used. If a deposition has been taken, and the party in interest on whose application it was taken refuses to offer the deposition, or any part thereof, in evidence, any other party in interest or the Examiner may introduce the deposition or any portion thereof on which he wishes to rely.

#### § 4.222 Written interrogatories; admission of facts and documents.

At any time prior to a hearing and in sufficient time to permit answers to be filed before the hearing, a party in interest may serve upon any other party in interest written interrogatories and requests for admission of facts and documents by filing such application and requests with the Examiner, who shall thereupon transmit a copy to the party in interest for whom they are intended. Such interrogatories and requests for admissions shall be drawn with the purpose of defining the issues in dispute between the parties and facilitating the

presentation of evidence at the hearing. Answers shall be served upon the Examiner within 15 days from the date of service of such interrogatories or within such other period of time as may be agreed upon by the parties or prescribed by the Examiner. A copy of the answers shall be transmitted by the Examiner to the party propounding the interrogatories. Within 10 days after service of written interrogatories are made upon him, a party in interest so served may serve cross-interrogatories for answer by the witness to be interrogated.

#### § 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.

The Examiner, upon motion timely made by any party in interest, proper notice, and good cause shown, may direct that proceedings under §§ 4.220, 4.221, and 4.222 shall be conducted only under, and in accordance with, such limitation as he deems necessary and appropriate as to documents, time, place, and scope. The Examiner may act on his own motion only if undue delay, dilatory tactics, and unreasonable demands are made so as to delay the orderly progress of the proceeding or cause unacceptable hardship upon a party or witness.

#### § 4.224 Failure to comply with orders.

In the event of the failure of a party to comply with a request for the production of a document under § 4.220; or on the failure of a party to appear for examination under § 4.221 or on the failure of a party to respond to interrogatories or requests for admissions under § 4.222; or on the failure of a party to comply with an order of the Examiner issued under § 4.223 without, in any of such events, showing an excuse or explanation satisfactory to the Examiner for such failure, the Examiner may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the Examiner; or

(b) Make such other ruling as he determines just and proper.

#### § 4.225 Prehearing conference.

The Examiner may, upon his own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

- (a) Simplify or clarify the issues;
- (b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
- (c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;
- (d) Effect possible agreement disposing of all or any of the issues in dispute; and
- (e) Resolve such other matters as may simplify and shorten the hearing.

#### HEARINGS

#### § 4.230 Examiner; authority and duties.

The authority of the Examiner in all hearings in estate proceedings includes, but is not limited to, authority:

- (a) To administer oaths and affirmations;
- (b) To issue subpoenas under the provisions of 25 U.S.C. 374 (1964) upon his own initiative or within his discretion upon the request of any party in interest, to any person whose testimony he believes to be material to a hearing. Upon the failure or refusal of any person upon whom a subpoena shall have been served to appear at a hearing or to testify, the Examiner may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness;
- (c) To permit any party in interest to cross-examine any witness;
- (d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;
- (e) To rule upon offers of proof and receive evidence;
- (f) To take and cause depositions to be taken and to determine their scope; and
- (g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

#### § 4.231 Hearings.

(a) All testimony in Indian probate hearings shall be under oath and shall be taken in public except in those circumstances which in the opinion of the Examiner justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings shall be recorded verbatim and transcribed and made a part of the record.

(c) The record shall include a showing of the names of all parties in interest and of attorneys who attended such hearing.

#### § 4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the Examiner's supervision as to the extent and manner of presentation of such evidence.

(b) The Examiner may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any particular form being within the discretion of the Examiner, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The Examiner may in any case require evidence in addition to that offered by the parties in interest.

#### § 4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of ..... } ss.  
 County of ..... }  
 I, ....., being first  
 duly sworn, on oath, depose and say: That I am an  
 ..... (enrolled or unenrolled) member of the  
 ..... Tribe of Indians  
 in the State of .....  
 that on the ..... day of ..... 19....  
 I requested .....  
 to prepare a will for me; that the attached will  
 was prepared and I requested .....  
 and ..... to act as witnesses  
 thereto; that I declared to said witnesses that said  
 instrument was my last will and testament; that I  
 signed said will in the presence of both witnesses  
 and they signed the same as witnesses in my pres-  
 ence and in the presence of each other; that said  
 will was read and explained to me (or read by  
 me), after being prepared and before I signed it  
 and it clearly and accurately expresses my wishes;  
 and that I willingly made and executed said will  
 as my free and voluntary act and deed for the  
 purposes therein expressed.

..... Testator/Testatrix  
 We, ..... and .....  
 each being first duly sworn,  
 on oath, depose and state: That on the ..... day  
 of ..... 19....  
 a member of the .....  
 Tribe of Indians of the State of .....  
 published and declared the attached  
 instrument to be his/her last will and testament,  
 signed the same in the presence of both of us and  
 requested both of us to sign the same as witnesses;  
 that we, in compliance with his/her request, signed  
 the same as witnesses in his/her presence and in  
 the presence of each other; that said testator/  
 testatrix was not acting under duress, menace,  
 fraud, or undue influence of any person, so far as  
 we could ascertain, and in our opinion was men-  
 tally capable of disposing of all his/her estate by  
 will.

..... Witness  
 ..... Witness  
 Subscribed and sworn to before me this .....  
 day of ..... 19.... by .....  
 ..... testator/testatrix, and by .....  
 ..... and .....  
 ..... attesting witnesses.  
 .....  
 (Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the

place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the Examiner may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the Examiner may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

#### § 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing shall make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The Examiner may call witnesses and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the Examiner may order payments of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he shall specify whether such costs shall be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of administration so allowed shall have a priority for payment greater than that for any creditor claims allowed, except the probate fee. Upon receipt of such order, the Superintendent shall pay such sums immediately from the estate account, if such funds are insufficient, then out of the funds as they accrue to such account with the proviso that such cost shall be paid in full with a later allocation against the interest of a party, if such was ordered.

#### § 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the Examiner has rendered his decision, the Examiner may upon his own motion or upon motion of any party in interest schedule a supplemental hearing if he deems it necessary.

The notice shall set forth the purpose of the supplemental hearing and shall be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the Examiner may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event the records shall clearly show who was present at the time of the announcement.

#### § 4.236 Record.

(a) After the completion of the hearing, the Examiner shall make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including a transcript of testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and appraisements of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship finding and family history;

(10) The decision and the Examiner's notice thereof; and

(11) Any other material or documents deemed material by the Examiner.

(b) The Examiner shall lodge the original record with the designated title plant in accordance with § 120.1 of Title 25 of the Code of Federal Regulations; a duplicate copy shall be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies.

#### DECISIONS

#### § 4.240 Decision of Examiner and notice thereof.

(a) The Examiner shall decide the issues of fact and law involved in the proceedings and shall incorporate in his decision:

(1) In all cases, the names, birth dates, relationships to the decedent, and

shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.

(2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.

(5) A determination of any rights of dower, curtesy or homestead which may constitute a burden upon the interest of the heirs.

(b) When the Examiner issues a decision, he shall issue a notice thereof to all parties who have or claim any interest in the estate and shall mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision shall not become final and no distribution shall be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24813, Dec. 23, 1971]

#### § 4.241 Rehearing.

(a) Any person aggrieved by the decision of the Examiner may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The Superintendent, upon receiving a petition for rehearing, shall promptly forward it to the Examiner. The Superin-

tendent shall not pay claims or distribute the estate while such petition is pending unless otherwise directed by the Examiner.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the Examiner shall issue an order denying the petition and shall set forth therein his reasons therefor. He shall furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the Examiner shall cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. The Examiner shall allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition. The Examiner shall then reconsider, with or without hearing as he may determine, the issues raised in the petition; he may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(d) Upon entry of a final order the Examiner shall lodge the complete record relating to the petition with the title plant designated under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(e) Successive petitions for rehearing are not permitted, and, except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the Examiner's jurisdiction shall have terminated upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein shall be construed as a bar to the remand of a case by the Board for further hearing or rehearing after appeal.

(f) At the time the final decision is entered following the filing of a petition for rehearing, the Examiner shall direct a notice of such action with a copy of the decision to the Superintendent and to the parties in interest and shall mail the same by regular mail to the said parties at their addresses of record.

(g) No distribution shall be made under such order for a period of 60 days following the mailing of a notice of

decision pending the filing of a notice of appeal by an aggrieved party as herein provided.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24813, Dec. 23, 1971]

#### § 4.242 Reopening.

(a) Within a period of 3 years from the date of a final decision issued by an Examiner or by the Board but not thereafter except as provided in §§ 4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition shall be addressed to the Examiner and filed at his headquarters. A copy of such petition shall be furnished also by the petitioner to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations shall be under oath and supported by affidavits.

(b) If the Examiner finds that proper grounds are not shown, he shall issue an order denying the petition and setting forth the reasons for such denial. Copies of the Examiner's decision shall be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(c) If the petition appears to show merit, the Examiner shall cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. Such persons may resist such petition by filing answers, cross-petitions, or briefs. Such filings shall be made within such reasonable time periods as the Examiner specifies. The Examiner shall then reconsider, with or without hearing as he may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision. Copies of the Examiner's decision shall be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(d) To prevent manifest error an Examiner may reopen a case within a period of 3 years from the date of the

final decision, after due notice on his own motion, or on petition of an officer of the Bureau of Indian Affairs. Copies of the Examiner's decision shall be mailed to all parties in interest and to the Superintendent.

(e) The Examiner may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(f) The Examiner shall lodge the record made in disposing of a reopening petition with the title plant designated under § 4.236(b) and shall furnish a duplicate record thereof to the Superintendent.

(g) No distribution shall be made under a decision issued pursuant to paragraph (b), (c), or (d) of this section for a period of 60 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, and if it shall appear to the Examiner that there exists a possibility for correction of a manifest injustice, he shall forward the petition to the Board of Indian Appeals with a showing as to all intervening rights and a recommendation as to the action to be taken. The Board may, in its discretion, exercise the power reserved to the Secretary in § 1.2 of Title 25 of the Code of Federal Regulations, and waive or make an exception to the 3-year limitation contained in this section. If the Board shall determine that a reopening appears proper, then the petition may be remanded to the Examiner with instructions for further proceedings.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24813, Dec. 23, 1971]

#### CLAIMS

##### § 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under § 4.211(c) shall be filed with either the Superintendent or the Examiner prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.

(b) The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(c) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an Examiner's interim order.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments shall not be allowed.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24813, Dec. 23, 1971]

##### § 4.251 Priority of claims.

After allowance of the costs of administration, including the probate fee, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as

otherwise provided in paragraph (b) of this section:

(1) Claims for expenses for last illness not in excess of \$500, and for funeral expenses not in excess of \$500;

(2) Claims of unsecured indebtedness to the United States or any of its agencies;

(3) Claims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations;

(4) Claims of general creditors, including that portion of expenses of last illness not previously authorized in excess of \$500 and that portion of funeral charges not previously authorized in excess of \$500.

(b) The preference of the probate fee and of other claims may be deferred, in the discretion of the Examiner, in making adjustments or compromises beneficial to the estate.

(c) No claims of general creditors shall be allowed if the value of the estate is \$2,500 or less and the decedent is survived by a spouse or by one or more minor children. In no event shall claims be allowed in an aggregate amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to findings made under § 4.206, then the Examiner may in his discretion prorate all claims and reduce the allowance thereof on a ratio comparable with that existing between the total value of the estate and the value of that portion which is to lose its trust character.

#### § 4.252 Property subject to claims.

Claims are payable from income from

the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

#### WILLS

#### § 4.260 Making; review as to form; revocation.

(a) An Indian of the age of 21 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits the same to the Superintendent of the Agency, the Superintendent shall forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will or codicil or any replacement or copy thereof may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will shall be held in absolute confidence, and no person other than the testator shall admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart shall be deemed to be revoked by operation of the law of any State.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 21284, Nov. 5, 1971; 36 F.R. 24813, Dec. 23, 1971]

#### § 4.261 Anti-lapse provisions.

When an Indian testator devises or bequeaths trust property to any of his lineal descendants, mother or father, brothers or sisters, either of the whole or half-blood or their issue, and the de-



visée or legatee dies before the testator leaving lineal descendants, such descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood.

#### § 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, shall take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation shall vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

### CUSTODY AND DISTRIBUTION OF ESTATES

#### § 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all trust personal property of a deceased Indian and he may take such action, including sale thereof, as in his judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in § 4.240, § 4.241, or § 4.296 or decisions in the settlement of the estate as provided for in § 4.271. All expenses, including expenses of roundup, branding, care, and feeding of livestock, shall be a proper charge against the estate and may be paid by the Superintendent from those funds of the deceased that are under his control, or from the proceeds of a sale of the property or a part thereof.

#### § 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than \$1,000, the Superintendent shall assemble the apparent heirs and hold an informal hearing to determine the proper distribution thereof. A memorandum covering the hearing shall be retained in the agency files showing the date of death of the decedent, the date of hearing, the persons notified and attending, the amount on hand, and the disposition thereof. In the disposition of such funds, the Examiner or Superintendent shall dispose of creditors' claims

as provided in § 4.251. The Superintendent shall credit the balance, if any, to the legal heirs.

[36 F.R. 24814, Dec. 23, 1971]

#### § 4.272 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.296, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the Examiner's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner of the Bureau of Indian Affairs shall notify the Examiner who shall proceed to hold hearings if necessary and shall issue a decision under § 4.240. The record of any such proceeding shall be lodged with the title plant designated under § 4.236(b).

#### § 4.273 Improperly included property.

(a) When subsequent to a decision under § 4.240 or § 4.296, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The Examiner shall review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the Examiner shall give notice of his action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the Examiner may conduct a hearing at any stage of the modification proceeding. Any such hearing shall be scheduled and conducted in accordance with the rules of this

subpart. The Examiner shall enter a final decision based on his findings, modifying or refusing to modify the property inventory and his decision shall become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision shall be given in accordance with § 4.240(b).

(d) A party aggrieved by the Examiner's decision may appeal to the Board pursuant to the procedures in §§ 4.291-4.297.

(e) The record of all proceedings shall be lodged with the title plant designated under § 4.236(b).

[36 F.R. 24814, Dec. 23, 1971]

#### § 4.274 Distribution of estates.

(a) Unless the Superintendent shall have received a petition for rehearing filed pursuant to the requirements of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.291(b), he shall pay allowed claims, distribute the estate, and take all other necessary action directed by the Examiner's final order.

(b) The Superintendent may not pay claims nor make distribution of an estate during the pendency of proceedings under § 4.241 or § 4.242 unless the Examiner orders otherwise in writing. The Board may, at any time, authorize the Examiner to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24814, Dec. 23, 1971]

#### MISCELLANEOUS

##### § 4.280 Probate fees.

Upon a determination of the heirs to any trust or restricted Indian property of the value of \$250 or more or to any allotment, or after approval of any will disposing of such trust or restricted property, the following fees shall be paid (a) by the heirs, or (b) by the beneficiaries under the will, or (c) from the estate of the decedent, or (d) from the proceeds of the sale of the allotment, or (e) from any trust funds belonging to the estate of the decedent:

On estates appraised at:	
\$250 and not exceeding \$1,000 .....	\$20
Over \$1,000 and less than \$2,000 .....	25
\$2,000 and not exceeding \$3,000 .....	30
Over \$3,000 and not exceeding \$5,000 .....	50
Over \$5,000 and not exceeding \$7,500 .....	65
Over \$7,500 .....	175

<sup>1</sup> 45 Stat. 992; 25 U.S.C. sec. 377 (1964).

##### § 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the Examiner. At the Examiner's discretion such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees shall be filed prior to the close of the last hearing and shall be supported by such proof as is required by the Examiner. In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein shall prevent an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

##### § 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest shall be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the Examiner.

#### APPEAL TO THE BOARD OF INDIAN APPEALS

##### § 4.290 Who may appeal.

Any party in interest aggrieved by the action taken by an Examiner on a petition for rehearing or on a petition for reopening shall have a right of appeal to the Board of Indian Appeals. The scope of the review on appeal shall be limited to those issues which were before the Examiner when he ruled upon the petition for rehearing or reopening.

##### § 4.291 Appeals; how taken.

(a) *Notice of appeal.* The appellant shall file a written notice of appeal signed

by him or by his attorney or other qualified representative, in the office of the Examiner who issued the decision being appealed, within 60 days after the date of mailing of the notice of the decision being appealed. A full statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief which is filed pursuant to § 4.295(a). Failure to specify the basis relied upon will subject the appeal to dismissal.

(b) *Service of copies of notice of appeal.* The appellant shall hand deliver, or forward by certified mail, to the Examiner, the original and one copy of the notice of appeal, and he shall forward one copy by regular mail to the Board. At the time of filing the original notice, he shall forward copies of the notice of appeal by regular mail or otherwise to all Superintendents named on the Examiner's notice of decision, to all parties who share in the estate under the decision being appealed, and to all other parties who have appeared of record. The notice of appeal shall have attached thereto a certificate if filed by an attorney of record, or an affidavit if filed by a nonattorney, setting forth the names of parties served and the last known address of each to whom the notice was mailed.

(c) *Action by Examiner.* The Examiner receiving the notice of appeal shall forthwith advise the Board if the notice was not timely filed, and he shall file the original as a part of the record. He shall instruct the Superintendent to forthwith return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f), to the title plant designated under § 4.236(b) where the same shall be compared with and made identical to the original within 5 days. Thereafter, the duplicate shall be made available for inspection of the parties either at the title plant or at the office of the Superintendent as they may request.

[36 F.R. 7186, Apr. 15, 1971, as amended at 36 F.R. 24814, Dec. 23, 1971]

#### § 4.292 Appeal file.

The appeal file shall include the full record unless, by stipulation filed with the notice, the parties shall specify only a part thereof.

#### § 4.293 Notice of transmittal of appeal file.

The original appeal file shall be immediately forwarded to the Board by certified mail with a return card requested, with a letter of transmittal, a copy of which shall be addressed and mailed to the appellant or his attorney. The said copy shall constitute a notice of the transmittal of the said file. Thereafter, the file may be examined at the title plant or in the office of the Superintendent; any objection or request to supplement the file shall be filed with the Board within 15 days of the date of the transmittal letter. Upon failure to file such objection or a request to have the file supplemented, it will be conclusively presumed that the same is acceptable to the appellant. The appellee shall have an additional 15 days in which to file his objection to the file or to request that it be supplemented. On his failure to file such an objection or request, it will be conclusively presumed that the same is satisfactory to the appellee.

#### § 4.294 Docketing.

Following receipt by the Board of the appeal file, it shall be promptly, and in any event within 10 days, docketed and all of the following parties advised of its docketing: The appellant, the Examiner whose decision is being appealed, and all interested parties as shown by the record on appeal. Said notice shall further advise the appellant and all other parties of the time limitations within which briefs may be filed as set forth herein.

#### § 4.295 Pleadings.

(a) The appellant may file a brief or other written statement of his contentions and supporting authorities, all hereinafter called brief, within 30 days of the mailing of the notice of docketing. He shall serve a copy of said brief upon all other interested parties or their counsel and a certificate or an affidavit to that effect shall be filed with said brief. Opposing parties or their counsel shall have 30 days from the date of filing of appellant's brief with the Board in which to file any answer briefs, copies of which shall also be served upon the appellant or his counsel and all other parties in interest not joining in said

answer brief, and a certificate or an affidavit to that effect shall be filed concurrently with the Board.

(b) Appellant shall have 15 days from the date of filing of answer briefs in which to reply to any new issues raised, but he shall not raise any new issues therein. A certificate or an affidavit showing service of said briefs upon all opposing parties or their counsel shall be filed concurrently therewith. Except by special permission of the Board, no other briefs will be allowed on appeal.

#### § 4.296 Decisions.

Decisions of the Board will be made in writing. Sufficient copies thereof will be forwarded to the Examiner for immediate simultaneous distribution to all parties concerned, the Superintendent, the Commissioner, the title plant designated under § 4.236(b), and to such other persons as the Board in its discretion deems appropriate. Decisions of the Board, which are final upon issuance, shall not be executed prior to the expiration of 60 days following the date of issuance of the decision. Immediately upon expiration of such period, the Examiner shall issue any implementing or supplemental order which may be necessary in accordance with the Board's decision and shall notify the same offices and parties who received the decision of the Board and the title plant designated under § 4.236(b).

[36 F.R. 24814, Dec. 23, 1971]

#### § 4.297 Disposition of the record.

The record filed with the Board under § 4.292 and all documents added during the appeal proceedings, including the Board's decision, shall be returned by the Board to the title plant designated under § 4.236(b). Upon receipt of the record, the duplicate thereof required by § 4.291(c) shall be conformed to the original and returned to the Superintendent.

[36 F.R. 24814, Dec. 23, 1971]

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### PART 17—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

#### § 17.3 Discrimination prohibited.

(d) *Programs for Indians, natives of certain territories, and Alaska natives.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program which, in accordance with Federal law, is limited to Indians, natives of certain territories, or Alaska natives, if the individual is not a member of the class to which the program is addressed. Such programs include those authorized by statutes listed in Appendix B of this part.

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### PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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#### § 20.735-20 Specific types of conduct.

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(g) *Supplies for, and purchases from, Indians.* No Federal employee may have an interest in a contract with the Government or with the Indians for the purchase, transportation, or delivery of goods or supplies for the Indians (18 U.S.C. 437). While Federal employees may, under regulations of the Secretary of the Interior, purchase products, services, or commodities from Indians, such purchases may not be made for the purposes of resale (25 U.S.C. 87a). Regulations on purchases are found in 25 CFR 251.5.

\* \* \* \* \*

(s) *Indian employees and tribal representatives.* An Indian who is employed in a regularly established position in the Bureau of Indian Affairs within the jurisdiction of which his tribal body is a part, may not serve as a representative of his tribe, band, or pueblo. Neither may an Indian who is serving in such a representative capacity be employed in a regularly established position in the Bureau of Indian Affairs within the jurisdiction of which his tribal body is a part.

(1) These restrictions do not apply to Indians who are employed on an intermittent or irregular basis where such employment does not require decisions or actions which might be influenced by their official connection with the tribe,

band, or pueblo. Nor shall these restrictions prevent an Indian serving as a representative from being employed on such a basis.

(2) The Commissioner of Indian Affairs may make exceptions to the restrictions contained in this paragraph when circumstances justify.

(3) The term "representative" as used in this paragraph means the occupant of an elective or other position in the official governing body of the tribe, band, or pueblo, or any position established by such governing body which carries with it the right to vote in the proceedings of that body.

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## **Subtitle B—Regulations Relating to Public Lands**

### **CHAPTER 1—BUREAU OF RECLAMATION**

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#### **PART 417—PROCEDURAL METHODS FOR IMPLEMENTING COLORADO RIVER WATER CONSERVATION MEASURES WITH LOWER BASIN CONTRACTORS AND OTHERS**

##### **§ 417.1 Scope of part.**

The procedures established in this part shall apply to every public or private organization (herein termed "Contractor") in Arizona, California, or Nevada which, pursuant to the Boulder Canyon Project Act or to provisions of other Reclamation Laws, has a valid contract for the delivery of Colorado River water, and to Federal establishments other than Indian Reservations enumerated in Article II(D) of the March 9, 1964, Decree of the Supreme Court of the United States in the case of "Arizona v. California et al.", 376 U.S. 340 (for purposes of this part each such Federal establishment is considered as a "Contractor"), except that (a) neither this part nor the term "Contractor" as used herein shall apply to any person or entity which has a contract for the delivery or use of Colorado River water made pursuant to the Warren Act of February 21, 1911 (36 Stat. 925) or the Miscellaneous Purposes Act of February 25, 1920 (41 Stat. 451), (b) Contractors and permittees for small quantities of water, as determined

by the Regional Director, Bureau of Reclamation, Boulder City, Nev. (herein termed "Regional Director"), and Contractors for municipal and industrial water may be excluded from the application of these procedures at the discretion of the Regional Director, and (c) procedural methods for implementing Colorado River water conservation measures on Indian Reservations will be in accordance with § 417.5 hereof.

\* \* \* \* \*

##### **§ 417.5 Duties of the Commissioner of Indian Affairs with respect to Indian Reservations.**

(a) The Commissioner of Indian Affairs (herein termed "Commissioner") will engage in consultations with various tribes and other water users on the Indian Reservations listed in Article II(D) of said Supreme Court Decree, similar to those engaged in by the Regional Director with regard to Contractors as provided in § 417.2 hereof. After consideration of all comments and suggestions advanced by said tribes and other water users on said Indian Reservations concerning water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, the Commissioner shall, within the limits prescribed in said decree, make a determination as to the estimated amount of water to be diverted for use on each Indian Reservation covered by the above decree. Said determination shall be made prior to the beginning of each calendar year. That determination shall be based upon, but not necessarily limited to, such factors as: The area to be irrigated, climatic conditions, location, land classifications, the kinds of crops raised, cropping practices, the type of irrigation system in use, the condition of water carriage and distribution facilities, record of water orders, and rejections of ordered water, general operating practices, the operating efficiencies and methods of irrigation of the tribes and water users on each reservation, the amount and rate of return flows to the river, municipal water requirements, and other uses on the reservation. The Commissioner of Indian Affairs shall deliver to the Regional Director written notice of the amount of water to be

diverted for use upon each Indian Reservation for each year 60 days prior to the beginning of each calendar year and the basis for said determination. The determination of the Commissioner shall be final and conclusive unless within 30 days of the date of receipt of such notice the Regional Director submits his written comments and objections to the Commissioner of Indian Affairs and requests further consultation. If after such further consultation, timely taken, the Commissioner does not modify his determination and so advises the Regional Director in writing or if modifications are made by the Commissioner but the Regional Director still does not agree therewith, the Regional Director may, within 30 days after receipt of the Commissioner's response, appeal to the Secretary of the Interior for a decision on the matter. During the pendency of such appeal and until disposition thereof by the Secretary, water deliveries will be made to the extent legally and physically available according to the Commissioner's determination or according to the Commissioner's determination for the preceding calendar year, whichever is less.

**PART 418—NEWLANDS RECLAMATION PROJECT, NEVADA; TRUCKEE RIVER STORAGE PROJECT, NEVADA; AND WASHOE RECLAMATION PROJECT, NEVADA-CALIFORNIA (TRUCKEE AND CARSON RIVER BASINS, CALIFORNIA-NEVADA); PYRAMID LAKE INDIAN RESERVATION, NEVADA; STILL-WATER AREA, NEVADA**

§ 418.1 Statement of considerations leading to the proposed adoption of general operating criteria and principles relating to the captioned stream systems.

\* \* \* \* \*

(b) Under the Constitution and various acts of Congress, the United States is trustee for the Indians and in that status it is obligated to protect and preserve the rights and interests of the Pyramid Lake Tribe of Indians in the Truckee River and in Pyramid Lake. This trust responsibility is vested in the Secretary of the Interior. It is in the

national interest that the fishery resource of Pyramid Lake be restored, that agricultural use be developed, and that the water inflow to the Lake be such as to allow realization of the great potential thereof, including recreation. The regulations in this part will initiate Departmental controls, lacking in the past, to limit diversions by TCID from the Truckee River within decreed rights, and thereby make additional water available for delivery to Pyramid Lake.

\* \* \* \* \*

**§ 418.3 Procedures for operation, management and control of the Truckee and Carson Rivers in regard to exercise of water rights of the United States.**

In order to make the most efficient use of the available water:

(a) On or before October 1, 1967, the Regional Director of the Bureau of Reclamation as chairman, the Area Director of the Bureau of Indian Affairs, the Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the Federal Water Pollution Control Administration, the Regional Director of the Bureau of Outdoor Recreation, and the designee of the Geological Survey shall recommend operating criteria and procedures consistent with the guidelines set forth herein for the approval of the Secretary for the coordinated operation and control of the Truckee and Carson Rivers in regard to the exercise of water rights of the United States, so as to (1) comply with all of the terms and provisions of the Truckee River Decree and the Carson River Decree; and (2) maximize the use of the flows of the Carson River in satisfaction of Truckee-Carson Irrigation District's water entitlement and minimize the diversion of flows of the Truckee River for District use in order to make available to Pyramid Lake as much water as possible. Any change in subsequent years of the adopted operating criteria and procedures shall be formulated and approved in the same manner as set forth above.

(b) The departmental representatives designated in paragraph (a) of this section shall select a committee of water contractors and users and other directly affected interests, including the Pyramid

Lake Tribe and those using water for fishing, hunting and recreation in both river basins. The departmental representatives shall consult with this advisory committee in the formulation of the operating criteria and procedures.

\* \* \* \* \*

#### § 418.5 Water rights.

The regulations in this part prescribe water uses within existing rights. The regulations in this part do not, in any way, change, amend, modify, abandon, diminish, or extend existing rights.

\* \* \* \* \*

## CHAPTER II—BUREAU OF LAND MANAGEMENT

### PART 1850—HEARINGS PROCEDURES

\* \* \* \* \*

#### Subpart 1850 — Hearings Procedures: General

Sec.

1850.1 Cross reference.

#### Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

- 1855.1 Petitions of native groups.
- 1855.2 Hearing and notice.
- 1855.3 Powers of presiding officer.
- 1855.4 Appearances.
- 1855.5 Evidence.
- 1855.5-1 Rules of evidence.
- 1855.5-2 Opinion evidence.
- 1855.5-3 Stipulations.
- 1855.5-4 Depositions.
- 1855.5-5 Objections.
- 1855.6 Oral arguments and briefs.
- 1855.7 Filing the record of the hearing.
- 1855.8 Determination by the Secretary of the Interior.
- 1855.8-1 Report of findings and conclusions by presiding officer.
- 1855.8-2 Rehearing.
- 1855.9 Publication and revision.
- 1855.9-1 Public notice of regulations.
- 1855.9-2 Revision of subpart.

#### Subpart 1850 — Hearing Procedures: General

##### § 1850.1 Cross reference.

For special procedural rules applicable to hearings in public lands cases, including hearings under the Federal Range Code for Grazing Districts and hearings in both Government and private contest proceedings, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see Subpart E of Part 4 of this title. Subpart A of Part 4 and all if the general rules in Subpart B of Part 4 of this title not inconsistent with the special rules in Subpart E of Part 4 of this title are also applicable to such hearings, contest, and protest procedures.

(R.S. 2478, as amended; 43 U.S.C. 1201) [36 F.R. 15119, Aug. 13, 1971]

#### Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

AUTHORITY: The provisions of this Subpart 1855 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

SOURCE: The provisions of this Subpart 1855 appear at 35 F.R. 9531, June 13, 1970, unless otherwise noted.

##### § 1855.1 Petitions of native groups.

Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

##### § 1855.2 Hearing and notice.

The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued

from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

#### § 1855.3 Powers of presiding officer.

(a) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (1) Administer oaths; (2) rule upon motions and requests; (3) examine witnesses and receive evidence; (4) admit or exclude evidence and rule upon objections; (5) hear oral arguments and receive memoranda on facts and law in his discretion; (6) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(b) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(c) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

#### § 1855.4 Appearances.

Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify, or otherwise to participate in the hearing, state for

the record his authority to act as such counsel or representative.

#### § 1855.5 Evidence.

(a) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(b) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

#### § 1855.5-1 Rules of evidence.

All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

#### § 1855.5-2 Opinion evidence.

In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

#### § 1855.5-3 Stipulations.

In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

#### § 1855.5-4 Depositions.

The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the



time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

#### § 1855.5-5 Objections.

It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

#### § 1855.6 Oral arguments and briefs.

(a) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(b) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

#### § 1855.7 Filing the record of the hearing.

As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any

written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

#### § 1855.8 Determination by the Secretary of the Interior.

##### § 1855.8-1 Report of findings and conclusions by presiding officer.

Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

##### § 1855.8-2 Rehearing.

Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

##### § 1855.9 Publication and revision.

##### § 1855.9-1 Public notice of regulations.

Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

##### § 1855.9-2 Revision of subpart.

This subpart may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

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## PART 2090—SPECIAL LAWS AND RULES

### Subpart 2091—Segregation of Lands

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#### § 2091.2-1 Indian allotment.

Where an allotment application is approved by the authorized officer, it

operates as a segregation of the land, and subsequent applications for the same land will be rejected.

**§ 2091.5 Lands occupied by Indians.**

Authorized officers will ascertain by any means in their power whether any public lands in their districts are occupied by Indians and the location of their improvements, and will suspend all applications made by others than the Indian occupants, upon lands in the possession of Indians who have made improvements of any value whatever thereon.

\* \* \* \* \*

**§ 2091.6-3 Occupied lands.**

Lands occupied by Indians, Aleuts, and Eskimos in good faith are not subject to entry or appropriation by others.

\* \* \* \* \*

**§ 2091.9-5 Application for native allotment.**

The filing of an acceptable application for allotment will segregate the lands to the extent that conflicting applications for such lands will be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned occupancy of the land.

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**PART 2320—WITHDRAWALS FOR OTHER INTERIOR AGENCIES**

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**Subpart 2325—Bureau of Indian Affairs**

SOURCE: The provisions of this Subpart 2325 appear at 35 F.R. 9556, June 13, 1970, unless otherwise noted.

**§ 2325.1 Designation of Indian reservations in Alaska.**

(a) The inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes (5 U.S.C. 485), to supervise the public business relating to the Indians includes the supervision over reservations in the State of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. Opinion of the solicitor, May 18, 1923 (49 L.D. 592).

(b) The act of May 1, 1936 (49 Stat. 1250; 48 U.S.C., Sup. 358a, 362) extends certain provisions of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), known as the Wheeler-Howard Act, to Alaska, and provides for the designation of Indian reservations in the State.

(c) The act of May 31, 1938 (52 Stat. 593; 48 U.S.C. 353a), authorizes the Secretary of the Interior in his discretion to withdraw, subject to any valid existing rights, and permanently reserve, small tracts of not to exceed 640 acres each of the public domain in Alaska, for schools, hospitals, and such other purposes as may be necessary in administering the affairs of the Indians, Eskimos, and Aleuts of Alaska.

(R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357)

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**PART 2510—HOMESTEADS**

\* \* \* \* \*

**Subpart 2511—Original Homesteads**

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**§ 2511.3-2 Showing required of applicant.**

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(b) *Indian applicants.* (1) *Certificate required under act of July 4, 1884.* (i) The authorizing officer will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(ii) When such an application is presented without this certificate the authorizing officer will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(iii) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

(2) *Where Indian makes entry as citizen.* If an Indian makes application under the general homestead act, the authorizing officer will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any

certificate from the Commissioner of Indian Affairs.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the non-Indian homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

### Subpart 2515—Reclamation Homesteads

#### § 2515.8 Flathead Irrigation District, Mont.

##### § 2515.8-1 Authority.

The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May 10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project. (Sec. 15, 35 Stat. 450)

##### § 2515.8-2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entryman for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value, annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

(b) *Acreage limitations.* No person can enter more than one farm unit, re-

gardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

(c) *Payment of costs.* Persons who enter farm units must pay that part of the cost of building, operating and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated. (Sec. 15, 35 Stat. 450)

##### § 2515.8-3 Assignment.

(a) *Right to assign.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441) persons who have made or may make homestead entries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extends the provisions of the act of June 23, 1910, supra, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

(c) *Filing of instruments of assign-*

*ment.* No assignment of a farm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the proper office of the showings and certificates required by paragraph (d) of this section.

(d) *Showing required.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraph (a) to (d) of this section should be

noted on the proper office record and, if approved the assignee in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-4 Surveys; plats.

(a) *Cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(b) *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the proper office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian Affairs, Billings, Montana, for formal approval.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-5 Mortgages.

(a) *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the proper office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private own-

ership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

(b) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the proper office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof under the act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(c) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by

or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the authorizing officer of the proper office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-6 Widows, heirs, or devisees of entrymen.

(a) *Completion of entries by widows, heirs, or devisees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

(b) *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L.D. 332.) The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-7 Proof.

(a) *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

(b) *Requirements of reclamation proof.* Entrymen, in making proof of compli-

ance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the authorizing officer of the proper office in which the land is situated, with his report or findings thereon.

(c) *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereupon. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

(d) *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, authorizing officers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received

of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2096 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the water-right charges have been met.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-8 Final certificates.

(a) *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the authorizing officer, to be sufficient, he will issue final certificate on the entry as provided in subparagraph (d) (1) of this section.

(b) *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the authorizing officer will reject it and allow the entryman the usual right of appeal.

(c) *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation by one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17,

1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the authorizing officer will issue final certificate on the entry. The final certificate so issued must be endorsed by the authorizing officer across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."

(ii) A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

#### § 2515.8-9 Cancellation of entries.

All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts au-

thorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be cancelled.

(Sec. 15, 35 Stat. 450)

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## PART 2530—INDIAN ALLOTMENTS

### Subpart 2530—Indian Allotments: General

Sec.

- 2530.0-3 Authority.
- 2530.0-7 Cross reference.
- 2530.0-8 Land subject to allotment

### Subpart 2531—Applications Generally

- 2531.1 Qualifications of applicants.
- 2531.2 Petition and applications.
- 2531.3 Effect of application.

### Subpart 2532—Allotments

- 2532.1 Certificate of allotment.
- 2532.2 Trust patent.

### Subpart 2533—Allotments Within National Forests

- 2533.0-3 Authority.
- 2533.0-8 Land subject to allotments.
- 2533.1 Application.
- 2533.2 Approval.

### Subpart 2530—Indian Allotments: General

AUTHORITY: The provisions of this Subpart 2530 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

SOURCE: The provisions of this Subpart 2530 appear at 35 F.R. 9589, June 13, 1970, unless otherwise noted.

#### § 2530.0-3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336),

provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the proper office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

(c) *Executive Orders 6910 and 6964, Taylor Grazing Act of June 28, 1934.* Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, and land within grazing districts established under section 1 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315), is not subject to settlement under Section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Parts 2410, 2420, and 2430 of this chapter.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23184, Oct. 31, 1972]

#### § 2530.0-7 Cross reference

For native allotments in Alaska see Subpart 2561 of this chapter.

#### § 2530.0-8 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to

any agricultural use other than grazing.

(3) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

### Subpart 2531—Applications, Generally

SOURCE: The provisions of this Subpart 2531 appear at 35 F.R.9590, June 13, 1970, unless otherwise noted.

#### § 2531.1 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and eligible for allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).



(c) *Heirs of Indian settlers and applicant.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also eligible upon application for allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one eligible himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not eligible for allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an In-

dian woman is married to non-Indian not eligible for an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such woman and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise eligible, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The act of June 2, 1924 (43 Stat.

253; 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23185, Oct. 31, 1972]

### § 2531.2 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see subpart 2533 of this part) must file with the authorized officer, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and eligible for allotment, as specified in paragraph 2531.1(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

### § 2531.3 Effect of application.

(a) Where an allotment application under the fourth section of the Act of February 8, 1887, as amended, 25 U.S.C. 334, is not accompanied by the requisite certification from the Bureau of Indian Affairs showing the applicant to be eligible for an allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(b) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent application for the same land will be rejected.

[37 FR 23185, Oct. 31, 1972]

## Subpart 2532—Allotments

SOURCE: The provisions of this Subpart 2532 appear at 35 F.R. 9590, June 13, 1970, unless otherwise noted.

### § 2532.1 Certificate of allotment.

(a) When the authorizing officer approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

### § 2532.2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his applica-

tion will be adjudicated as in other cases.

### Subpart 2533—Allotments Within National Forests

SOURCE: The provisions of this Subpart 2533 appear at 35 F.R. 9591, June 13, 1970, unless otherwise noted.

#### § 2533.0-3 Authority.

By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

#### § 2533.0-8 Land subject to allotment.

An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887, as amended, apply equally to applications under said section 31.

#### § 2533.1 Application.

An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

#### § 2533.2 Approval.

(a) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(b) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and

forward it to the Commissioner of Indian Affairs.

(c) The application must be filed with the authorizing officer of the proper office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

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### PART 2560—ALASKA OCCUPANCY AND USE

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#### Subpart 2561—Native Allotments

SOURCE: The provisions of this Subpart 2561 appear at 35 F.R. 9597, June 13, 1970, unless otherwise noted.

#### § 2561.0-2 Objectives.

It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands they use and occupy and to protect the lands from the encroachment of others.

#### § 2561.0-3 Authority.

The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357, 357a, 357b), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

#### § 2561.0-5 Definitions.

As used in the regulations in this section.

(a) The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial ac-

tual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(b) "Allotment" is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the "homestead" of the allottee and his heirs in perpetuity, and shall be inalienable and non-taxable except as otherwise provided by the Congress.

(c) "Allotment Act" means the Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357, 357a, 357b).

**§ 2561.0-8 Lands subject to allotment.**

(a) A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment shall be in reasonably compact form.

(b) In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

(c) Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(d) Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2093.4 of this chapter.

**§ 2561.1 Applications.**

(a) Applications for allotment properly and completely executed on a form approved by the Director, Bureau of Land Management, must be filed in the proper office which has jurisdiction over the lands.

(b) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters shall be considered a request for waiver

of the 160-rod limitation (see Part 2094 of this chapter).

(c) If surveyed, the land must be described in the application according to legal subdivisions and must conform to the plat or survey when possible. If unsurveyed, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for allotment will segregate the lands. Thereafter subsequent conflicting applications for such lands shall be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned use and occupancy of the land.

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the proper office, his application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

**§ 2561.2 Proof of use and occupancy.**

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the proper land office. If made by the applicant, it must be signed by him, but if

he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

#### § 2561.3 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and non-taxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

### Subpart 2564—Native Townsites

SOURCE: The provisions of this Subpart 2564 appear at 35 F.R. 9601, June 13, 1970, unless otherwise noted.

#### § 2564.0-3 Authority.

The act of May 25, 1926, (44 Stat. 629; 48 U.S.C. 355a-355d) provides for the townsite survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee townsites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee townsite.

#### § 2564.0-4 Responsibility.

(a) *Administration of Indian posses-*

*sions in trustee towns.* As to Indian possessions in trustee town-sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U.S.C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee town-sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

(b) *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of said act of May 25, 1926 (44 Stat. 630; 48 U.S.C. 355c), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

#### § 2564.1 Application for restricted deed.

A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee town-site and who desires to obtain a restricted deed for such tract should file application therefor on a form approved by the Director, with the town-site trustee.

#### § 2564.2 No payment, publication or proof required on entry for native towns.

In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town-sites will not be required.

#### § 2564.3 Native towns occupied partly by white occupants.

Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

#### § 2564.4 Provisions to be inserted in restricted deeds.

The town site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under

authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

**§ 2564.5 Sale of land for which restricted deed was issued.**

When a native possessing a restricted deed for land in a trustee town site issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d), desires to sell the land, he should execute a deed on a form approved by the Director, prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the town-site trustee in Alaska. The town-site trustee will forward the deed to the Area Director of the Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, through the town-site trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

**§ 2564.6 Application for unrestricted deed.**

Any Alaska native who claims and occupies a tract of land in a trustee town site is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355e) may file an application for an unrestricted deed pursuant to the act of February 26, 1948 (62 Stat. 36; 48 U.S.C. 355e), with the town-site trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Bureau of Indian Affairs.

**§ 2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.**

(a) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the town-site trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to a right of appeal to the Director, Bureau of Land Management, and to the Secretary of the Interior, in accordance with Part 1840 of this chapter.

(b) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of

the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(c) Except as provided in this section, the town-site trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

(44 Stat. 630; 48 U.S.C. 355d. Interpret or apply 44 Stat. 629, 630, 62 Stat. 35; 48 U.S.C. 355a, 355b, 355c, 355e)

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### Subpart 2567—Alaska: Homestead Settlement

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#### § 2567.0-7 Cross references.

For Indian and Eskimo allotments, Subpart 2561, for school indemnity selections Subpart 2627; for shore space, Subpart 2094; for soldier's additional rights, Subpart 2616; for trade and manufacturing sites, Subpart 2562.

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## PART 2650—ALASKA NATIVE SELECTIONS

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AUTHORITY: Sec. 25 of the Alaska Native Claims Settlement Act of December 18, 1971; Administrative Procedure Act (5 U.S.C. 551 et seq.) unless otherwise noted.

SOURCE: 38 FR 14218, May 30, 1973, unless otherwise noted.

### Subpart 2650—Alaska Native Selections—Generally

#### § 2650.0-1 Purpose.

The purpose of the regulations in this part is to provide procedures for orderly and timely implementation of those provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) which pertain to selections of lands and interests in lands in satisfaction of the land selections conferred by said act upon Alaska Natives and Alaska Native corporations.

#### § 2650.0-2 Objectives.

The program of the Secretary is to implement such provisions in keeping with the congressional declaration of policy that the settlement of the Natives' aboriginal land claims be fair and just and that it be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation and with maximum participation by Natives in decisions affecting their rights and property.

### § 2650.0-3 Authority.

Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, authorizes the Secretary of the Interior to issue and publish in the *FEDERAL REGISTER*, pursuant to the Administrative Procedure Act (5 U.S.C. 551, et seq.), such regulations as may be necessary to carry out the purposes of the act.

### § 2650.0-5 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) and any amendments thereto.

(b) "Secretary" means the Secretary of the Interior or his authorized delegate.

(c) "Native" means a Native as defined in section 3(b) of the act.

(d) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska, as defined in section 3(c) of the act.

(e) "Village corporation" means a profit or nonprofit Alaska Native village corporation which is eligible under § 2651.2 of this chapter to select land and receive benefits under the act, and is organized under the laws of the State of Alaska in accordance with the provisions of section 8 of the act.

(f) "Regional corporation" means an Alaska Native regional corporation organized under the laws of the State of Alaska in accordance with the provisions of section 7 of the act.

(g) "Public lands" means all Federal lands and interests in lands located in Alaska (including the beds of all non-navigable bodies of water), except:

(1) The smallest practicable tract, as determined by the Secretary, enclosing land actually used, but not necessarily having improvements thereon, in connection with the administration of a Federal installation; and,

(2) Land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341; 77 Stat. 223; 48 U.S.C. ch. 2), or identified for selection by the State prior to January 17, 1969, except as provided in § 2651.4(a)(1) of this chapter.

(h) "Interim conveyance" as used in these regulations means the conveyance granting to the recipient legal title to

unsurveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law, subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land.

(i) "Patent" as used in these regulations means the original conveyance granting legal title to the recipient to surveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law; or the document issued after approval of the survey by the Bureau of Land Management, to confirm the boundary description of the unsurveyed lands.

(j) "Conveyance" as used in these regulations means the transfer of title pursuant to the provisions of the act whether by interim conveyance or patent, whichever occurs first.

(k) "National Wildlife Refuge System" means all lands, waters, and interests therein administered on December 18, 1971, by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, as provided in the act of October 15, 1966, 80 Stat. 927, as amended by the act of July 18, 1968, 82 Stat. 359 (16 U.S.C. 668dd).

(l) "Protraction diagram" means the approved diagram of the Bureau of Land Management mathematical plan for extending the public land surveys and does not constitute an official Bureau of Land Management survey, and, in the absence of an approved diagram of the Bureau of Land Management, includes the State of Alaska protraction diagrams which have been authenticated by the Bureau of Land Management.

(m) "Date of filing" shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office.

### § 2650.0-7 References.

(a) Native enrollment procedures are contained in 25 CFR 43h.



(b) Withdrawal procedures are contained in part 2300 of this chapter.

(c) Application procedures are contained in subpart 1821 of this chapter.

(d) Appeals procedures are contained in 43 CFR part 4.

(e) Mineral patent application procedures are contained in part 3860 of this chapter.

#### § 2650.0-8 Waiver.

The Secretary may, in his discretion, waive any nonstatutory requirement of these regulations. When the rights of third parties will not be impaired, and when rapid, certain settlement of the claims of Natives will be assisted, minor procedural and technical errors should be waived.

#### § 2650.1 Provisions for interim administration.

(a) (1) Prior to any conveyance under the act, all public lands withdrawn pursuant to sections 11, 14, and 16, or covered by section 19 of the act, shall be administered under applicable laws and regulations by the Secretary of the Interior, or by the Secretary of Agriculture in the case of national forest lands, as provided by section 22(i) of the act. The authority of the Secretary of the Interior and of the Secretary of Agriculture to make contracts and to issue leases, permits, rights-of-way, or easements is not impaired by the withdrawals.

(2) (i) Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in subdivision (ii) of this subparagraph.

(ii) Prior to making contracts, or issuing leases, permits, rights-of-way, or easements on lands subject to election pursuant to section 19(b) of the act, the Secretary shall obtain the consent of the representatives of the Natives living on those lands.

(b) As provided in section 17(d) (3) of the act, any lands withdrawn pursuant to section 17(d) shall be subject to administration by the Secretary under applicable laws and regulations and his authority to make contracts, and to issue leases, permits, rights-of-way, or easements shall not be impaired by the

withdrawal. To the extent that any such land is also subject to the provisions of paragraph (a) of this section, the provisions of that subsection shall govern.

(c) As provided in section 21(e) of the act, so long as there are no substantial revenues from real property interests conveyed pursuant to this act and the lands are not subject to State and local real property taxes, such lands shall continue to receive forest fire protection services from the United States at no cost. The Secretary will promulgate criteria, after consultation with the concerned Native corporations and the State of Alaska, for determining when substantial revenues are accruing as to lands for which forest fire protection services are furnished by the Department of the Interior and no discontinuance of such service will be ordered by the Secretary unless he finds, after notice and opportunity for submission of views, that such discontinuance is in conformity with the criteria.

#### § 2650.2 Application procedures for land selections.

(a) Applications for land selections must be filed on forms approved by the Director, Bureau of Land Management. Applications must be filed in accordance with subpart 1821 of this chapter.

(b) Each regional corporation shall submit with its initial application under this section a copy of the resolution authorizing the individual filing the application to do so.

(c) Each village corporation under subpart 2651 of this chapter must submit with its initial application under this section a certificate of incorporation, evidence of approval of its articles of incorporation by the regional corporation for that region, and a copy of the authorization of the individual filing the application to do so.

(d) (1) Regional and village corporations authorized by the act subsequently filing additional or amendatory applications need only refer to the serial number of the initial filing.

(2) Any change of the officer authorized to act for any corporation in the matter of land selections should be promptly submitted to the appropriate office of the Bureau of Land Management.

(e) (1) If the lands applied for are surveyed, the legal description of the lands in accordance with the official plats of survey shall be used.

(2) If the lands applied for are unsurveyed, they shall be described by protraction diagrams.

(3) If the lands applied for are not surveyed and are not covered by protraction diagrams, they must be described by metes and bounds commencing at a readily identifiable topographic feature, such as a mountain peak, mouth of a stream, etc., or a monumented point of known position, such as a triangulation station, and the description must be accompanied by a topographic map delineating the boundary of the area applied for.

(4) Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have been published, these maps shall be used to portray and describe the lands applied for. Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have not been published, then the 1:250,000 U.S.G.S. quadrangle maps with the protraction diagrams plotted thereon shall be used.

(5) If the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling.

(f) The selected areas may be adjusted by the Secretary with the consent of the applicant and amendment of the application by the applicant, provided that the adjustment will not create an excess over the selection entitlement.

### § 2650.3 Lawful entries, lawful settlements, and mining claims.

#### § 2650.3-1 Lawful entries and lawful settlements.

(a) Pursuant to sections 14(g) and 22(b) of the act, all conveyances issued under the act shall exclude any lawful entries or entries which have been perfected under, or are being maintained in compliance with, laws leading to the acquisition of title, but shall include land subject to valid existing rights of a temporary or limited nature such as those created by leases (including leases issued under section 6(g) of the Alaska

Statehood Act), contracts, permits, rights-of-way, or easements.

(b) The right of use and occupancy of persons who initiated lawful settlement or entry of land, prior to August 31, 1971, is protected: *Provided, That:*

(1) Occupancy has been or is being maintained in accordance with the appropriate public land law, and

(2) Settlement or entry was not in violation of Public Land Order No. 4582, as amended. Any person who entered or settled upon land in violation of that public land order has gained no rights.

(c) In the event land excluded from conveyance under paragraph (a) of this section reverts to the United States, the grantee or his successor in interest shall be afforded an opportunity to acquire such land by exchange pursuant to section 22(f) of the act.

### § 2650.3-2 Mining claims.

(a) *Possessory rights.*—Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any mining claim may be challenged by the United States or by the grantee or his successor in interest at any time.

(b) *Patent requirements met.*—An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976, on lands conveyed to village or regional corporations.

(1) Upon a showing that a mineral survey cannot be completed by December 18, 1976, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, will constitute an acceptable mineral patent application, provided all applicable requirements under the general mining laws have been met.

(2) The failure of an applicant to prosecute diligently his application for mineral patent to completion will result

in the loss of benefits afforded by section 22(c) of the act.

(3) The appropriate office of the Bureau of Land Management shall give notice of the filing of an application under this section to the village or regional corporation which has selection rights in the land covered by the application.

(c) *Patent requirements not met.*— Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

#### § 2650.4 Conveyance reservations.

##### § 2650.4-1 Existing rights and contracts.

Any conveyance issued for surface and subsurface rights under this act will be subject to any lease, contract, permit, right-of-way, or easement and the rights of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted him.

##### § 2650.4-2 Succession of interest.

Upon issuance of any conveyance under this authority, the grantee thereunder shall succeed and become entitled to any and all interests of the State of Alaska or of the United States as lessor, contractor, permitter, or grantor, in any such lease, contract, permit, right-of-way, or easement covering the estate conveyed, subject to the provisions of section 14(g) of the act.

##### § 2650.4-3 Administration.

Leases, contracts, permits, rights-of-way, or easements granted prior to the issuance of any conveyance under this authority shall continue to be administered by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a lease, contract, permit, right-of-way,

or easement, unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way or easement, or waive any right or benefit belonging to the grantee until he has notified the grantee and allowed him an opportunity to present his views.

#### § 2650.4-4 Revenues [Reserved]

##### § 2650.4-5 National forest lands.

Every conveyance which includes lands within the boundaries of a national forest shall, as to such lands, contain reservations that:

(a) Until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

(b) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands.

##### § 2650.4-6 National wildlife refuge system lands.

(a) Every conveyance which includes lands within the national wildlife refuge system shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the village corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the village corporation does not consummate the sale in accordance with the notice to the United States.

(b) Every conveyance which covers lands lying within the boundaries of a national wildlife refuge in existence on

December 18, 1971, shall provide that the lands shall remain subject to the laws and regulations governing use and development of such refuge so long as such lands remain in the refuge. Regulations governing use and development of refuge lands conveyed pursuant to section 14 shall permit such uses that will not materially impair the values for which the refuge was established.

#### § 2650.4-7 Public easements.

(a) Prior to reserving any public easements under section 17(b) of the act, the concerned village and regional corporations shall be afforded notice and opportunity for submission of views. If the Secretary determines that a public easement should be reserved in any conveyance, the reasons for that determination will be provided in writing, upon request of the grantee.

(b)(1) A public easement shall be reserved only if it is specific as to use and corridor location and size and both use and corridor location and size shall be reasonably related to an anticipated public use or a planned or existing governmental function.

(2) No public easement shall be reserved in such manner as to:

(i) Deprive the grantee or its successor in interest of reasonable access to bodies of water or highways in or bordering upon the land embraced in the conveyance without his consent.

(ii) Constitute a so-called scenic easement.

(c) A reserved public easement shall be subject to the following conditions:

(1) The Secretary shall terminate a public easement if it is not used for its purpose by the date specified in the conveyance, but in any event not later than December 18, 2001, or if he finds that conditions are such that its retention is no longer needed for public use or governmental function.

(2) The grantee or its successor in interest shall be entitled to just compensation for the loss of value of any improvements existing on the date of the reservation of the easement which are impaired or required to be removed by the exercise of the easement.

(3) The easement shall be no more extensive in size than is reasonably required for the purpose for which re-

served. Upon the definite location of an easement or easements for which a corridor was reserved, the reservation to the extent not used for the easement or easements shall be of no further force or effect.

(4) A corridor location shall be no more extensive in width or length than is reasonably necessary to locate any easement to be reserved, taking into consideration climate, topography, terrain, and available data.

(d) The State and the Federal-State Land Use Planning Commission shall be afforded 90 days after notice by the Secretary to make recommendations with respect to the inclusion of public easements in any conveyance.

#### § 2650.5 Survey requirements.

##### § 2650.5-1 General.

(a) Selected areas are to be surveyed as provided in section 13 of the act. Any survey or description used as a basis for conveyance must be adequate to identify the lands to be conveyed.

(b) Surveys shall take into account the navigability or nonnavigability of bodies of water. The beds of all bodies of water determined by the Secretary to be navigable shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlements under the act. Prior to making his determination as to the navigability of a body of water, the Secretary shall afford the affected regional corporation the opportunity to review the data submitted by the State of Alaska on the question of navigability and to submit its views on the question of navigability. Upon request of a regional corporation or the State of Alaska, the Secretary shall provide in writing the basis upon which his final determination of navigability is made. The beds of all bodies of water not determined to be navigable shall be included in the surveys as public lands, shall be included in the gross area of the surveys, and shall be charged to total acreage entitlements under the act. The beds of all nonnavigable bodies of water comprising one half or more of a section shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlement under the act, unless the section containing the body of water

is expressly selected or unless all the riparian land surrounding the body of water is selected. No ground survey or monumentation will be required to be done by the Bureau of Land Management of bodies of water.

**§ 2650.5-2 Rule of approximation.**

To assure full entitlement, the rule of approximation may be applied with respect to the acreage limitations applicable to conveyances and surveys under this authority, i.e., any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated (see 62 I.D. 417, 421).

**§ 2650.5-3 Regional surveys.**

Lands to be conveyed to a regional corporation, when selected in contiguous units, shall be together for the purpose of survey and surveyed as one tract, with monuments being established on the exterior boundary at angle points and at intervals of approximately 2 miles on straight lines. If requested by the grantee, the Secretary may survey, insofar as practicable, the individual selections that comprise the total tract.

**§ 2650.5-4 Village surveys.**

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the act.

(c) (1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

**§ 2650.5-5 Cemetery sites and historical places.**

Only those cemetery sites and historical places to be conveyed under section 14(h) (1) of the act shall be surveyed.

**§ 2650.5-6 Adjustment to plat of survey.**

All conveyances issued for lands not covered by officially approved surveys of the Bureau of Land Management shall note that upon the filing of an official plat of survey, the boundary of the selected area, described in terms of protraction diagrams or by metes and bounds, shall be redescribed in accordance with the plats of survey. However, no change will be made in the land selected.

**§ 2650.6 Selection limitations.**

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first-class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-

rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan.

(b) Determination as to which cities were classified as home rule or first class as of December 18, 1971, and their boundaries as of that date will be made in accordance with the laws of the State of Alaska.

(c) If any village corporation whose land withdrawals encompass Dutch Harbor is found eligible under this act, it may select lands pursuant to subpart 2651 of this chapter and receive a conveyance under the terms of section 14(a) of the act.

#### § 2650.7 Publication.

In order to determine whether there are any adverse claimants to the land, the applicant should publish notice of his application. If the applicant decides to avail himself of the privilege of publishing a notice to all adverse claimants and request it, the authorized officer will prepare a notice for publication. The publication will be in accordance with the following procedure:

(a) The applicant will have the notice published allowing all persons claiming the land adversely to file in the appropriate land office their objections to the issuance of any conveyance. The notice shall be published once a week for 4 consecutive weeks in a newspaper of general circulation.

(b) The applicant shall file a statement of the publisher, accompanied by a copy of the published notice, showing that publication has been had for 4 consecutive weeks. The applicant must pay the cost of publication.

(c) Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

#### § 2650.8 Appeals.

(a) Any decision adversely affecting any land selection shall become final, unless appealed to the Secretary by a notice filed in the office issuing the decision.

(b) Appeals to the Secretary shall be to the ad hoc Board as established in § 2651.2(a) (5) of this chapter. Appeals shall be filed and governed by the applicable regulations in part 4, subpart G

of this title. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the ad hoc Board shall be submitted to the Secretary for his personal approval.

### Subpart 2651—Village Selections

#### § 2651.0-3 Authority.

Sections 12 and 16(b) of the act provide for the selection of lands by eligible village corporations.

#### § 2651.1 Entitlement.

(a) Village corporations eligible for land benefits under the act shall be entitled to a conveyance to the surface estate in accordance with sections 14(a) and 16(b) of the act.

(b) In addition to the land benefits in paragraph (a) of this section, each eligible village corporation shall be entitled to select and receive a conveyance to the surface estate for such acreage as is reallocated to the village corporation in accordance with section 12(b) of the act.

#### § 2651.2 Eligibility requirements.

(a) Pursuant to sections 11(b) and 16(a) of the act, the Director, Juneau Area Office, Bureau of Indian Affairs, shall review and make a determination, not later than December 19, 1973, as to which villages are eligible for benefits under the act.

(1) *Review of listed native villages.* The Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination of the eligibility of villages listed in section 11(b)(1) and 16(a) of the act. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to paragraph (b) of this section.

(2) *Findings of fact and notice of proposed decision.*—After completion of the investigation and examination of records and evidence with respect to the eligibility of a village listed in sections 11(b)(1) and 16(a) of the act for land benefits, the Director, Juneau Area Office, Bureau of Indian Affairs, shall publish in the FEDERAL REGISTER and in one or more newspapers of general cir-

ulation in Alaska his proposed decision with respect to such eligibility and shall mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska and the State of Alaska. His proposed decision is subject to protest by any interested party within 30 days of the publication of the proposed decision in the FEDERAL REGISTER. If no valid protest is received within the 30-day period, such proposed decision shall become final and shall be published in the FEDERAL REGISTER. If the final decision is in favor of a listed village, the Director, Juneau Area Office, Bureau of Indian Affairs, shall issue a certificate as to the eligibility of the village in question for land benefits under the act, and certify the record and the decision to the Secretary. Copies of the final decisions and certificates of village eligibility shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, and the state of Alaska.

(3) *Protest.*—Within 30 days from the date of publication of the proposed decision in the FEDERAL REGISTER, any interested party may protest a proposed decision as to the eligibility of a village. No protest shall be considered which is not accompanied by supporting evidence. The protest shall be mailed to the Director, Juneau Area Office, Bureau of Indian Affairs.

(4) *Action on protest.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall examine and evaluate the protest and supporting evidence required herein, together with his record of findings of fact and proposed decision, and shall render a decision on the eligibility of the Native village that is the subject of the protest. Such decision shall be rendered within 30 days from the receipt of the protest and supporting evidence by the Director, Juneau Area Office, Bureau of Indian Affairs. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision

is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary by a notice filed with the ad hoc board as established in paragraph (a) (5) of this section, within 30 days of its publication in the FEDERAL REGISTER.

(5) *Action on appeals.*—Appeals to the Secretary shall be to the ad hoc Board which he has personally appointed. At least one member of the ad hoc Board shall be familiar with Native village life. Among those otherwise qualified to serve on the ad hoc Board, preference will be given to those familiar with Native village life. Appeals shall be filed and governed by the applicable regulations in part 4, subpart G, of this title, except that the appellant shall have not more than 15 days from the date of filing of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the ad hoc Board shall be submitted to the Secretary for his personal approval.

(6) *Applications by unlisted villages for determination of eligibility.*—The head or any authorized subordinate officer of a Native village not listed in section 11(b) of the act may file on behalf of the unlisted village an application for a determination of its eligibility for land benefits under the act. Such application shall be filed in duplicate with the Director, Juneau Area Office, Bureau of Indian Affairs, prior to September 1, 1973. If the application does not constitute prima facie evidence of compliance with the requirements of paragraph (b) of this section, he shall return the application to the party filing the same with a statement of reasons for return of the application, but such filing, even if returned, shall constitute timely filing of the application. The Director, Juneau

Area Office, Bureau of Indian Affairs, shall immediately forward an application which appears to meet the criteria for eligibility to the appropriate office of the Bureau of Land Management for filing. Each application must identify the township or townships in which the Native village is located.

(7) *Segregation of land.*—The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a) (1) and (2) of the act.

(8) *Action on application for eligibility.*—Upon receipt of an application which appears to meet the criteria for eligibility, the Director, Juneau Area Office, Bureau of Indian Affairs, shall have a notice of the filing of the application published in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall promptly review the statements contained in the application. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to this subpart 2651, and thereafter make findings of fact as to the character of the village. No later than December 19, 1973, the Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination as to the eligibility of the village as a Native village for land benefits under the act and shall issue a decision. He shall publish his decision in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall mail a copy of the decision to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations, and the State of Alaska.

(9) *Protest to eligibility determination.*—Any interested party may protest a decision of the Director, Juneau Area Office, Bureau of Indian Affairs, regarding the eligibility of a Native village for land benefits under the provisions of sections 11(b) (3) (A) and (B) of the act by filing a notice of protest with the Director, Juneau Area Office, Bureau of Indian Affairs, within 30 days from the date of publication of the decision in the FEDERAL REGISTER. A copy of the protest must be mailed to the representa-

tive or representatives of the village, all villages in the region in which the village is located, all regional corporations within Alaska, the State of Alaska, and any other parties of record. If no protest is received within the 30-day period, the decision shall become final and the Director, Juneau Area Office, Bureau of Indian Affairs, shall certify the record and the decision to the Secretary. No protest shall be considered which is not accompanied by supporting evidence. Anyone protesting a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect. Anyone appealing a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect.

(10) *Action on protest, appeal.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall follow the procedure outlined in paragraph (a) (4) of this section. If an appeal is taken from a decision on eligibility, the provisions of paragraph (a) (5) of this section shall apply.

(b) Except as provided in subparagraph (4) of this paragraph, villages must meet each of the following criteria to be eligible for benefits under sections 14 (a) and (b) of the act:

(1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.

(2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: *Provided*, That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.

(3) The village must not be modern and urban in character. A village will be



considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:

- (i) Population over 600.
- (ii) A centralized water system and sewage system that serves a majority of the residents.
- (iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.
- (iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in sections 11 and 16 of the act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to subparagraph (3) of this paragraph.

#### § 2651.3 Selection period.

Each eligible village corporation must file its selection application(s) not later than December 18, 1974, under sections 12(a) or 16(b) of the act; and not later than December 18, 1975, under section 12(b) of the act.

#### § 2651.4 Selection limitations.

(a) Each eligible village corporation may select the maximum surface acreage entitlement under sections 12 (a) and (b) and section 16(b) of the act. Village corporations selecting lands under sections 12 (a) and (b) may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; and

(2) 69,120 acres of land from the National Wildlife Refuge System; and

(3) 69,120 acres of land from the National Forest System.

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available

lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection or a section in which a body of water comprises more than one-half of the total acreage of a section. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12 (a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

(d) Village corporation selections within sections 11 (a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(e) Village or regional corporations are not required to select lands within an unpatented mining claim or millsite. Unpatented mining claims and millsites shall be deemed to be selected, unless they are excluded from the selection by metes and bounds or other suitable description and there is attached to the selection application a copy of the notice of location and any amendments thereto. If the village or regional corporation selection omits lands within an unpatented mining claim or millsite, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the excepted mining claims or millsites are declared invalid, or under the State

of Alaska mining laws are determined to be abandoned, the selection will no longer be considered as compact and contiguous. The corporation shall be required to amend its selection, upon notice from the authorized officer of the Bureau of Land Management, to include the lands formerly included in the mining claim or millsite. If the corporation fails to amend its selection to include such lands, the selection may be rejected.

(f) Eligible village corporations may file applications in excess of their total entitlement. To insure that a village acquires its selection in the order of its priorities, it should identify its choices numerically in the order it wishes them granted. Such selections must be filed not later than December 18, 1974, as to sections 12(a) or 16(b) selections and December 18, 1975, as to section 12(b) selections.

(g) Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with section 12(e) of the act.

#### § 2651.5 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to village corporations shall provide for the transfer of the surface estates specified in section 14(c) of the act, and shall be subject to valid existing rights under section 14(g) of the act.

#### § 2651.6 Airport and air navigation facilities.

(a) Every airport and air navigation facility owned and operated by the United States which the Secretary determines is actually used in connection with the administration of a Federal program will be deemed a "Federal installation" under the provisions of section 3(e) of the act, and the Secretary will determine the smallest practicable tract which shall enclose such Federal installations. Such Federal installations are not public lands as defined in the act and are therefore not "lands available for selection" under the provisions of these regulations.

(b) The surface of all other lands of existing airport sites, airway beacons, or

other navigation aids, together with such additional acreage or easements as are necessary to provide related services and to insure safe approaches to airport runways, shall be conveyed by the village corporation to the State of Alaska, and the Secretary will include in the conveyance to any village corporation any and all covenants which he deems necessary to insure the fulfillment of this obligation.

### Subpart 2652—Regional Selections

#### § 2652.0-3 Authority.

Sections 12 (a) (1) and (c) (3) provide for selections by regional corporations; and sections 14 (e), (f), (h), (1), (2), (3), (5), and (8), provide for the conveyance to regional corporations of the selected surface and subsurface estates, as appropriate.

#### § 2652.1 Entitlement.

(a) Eligible regional corporations may select the maximum acreage granted pursuant to section 12(c) of the act. They will be notified by the Secretary of their entitlement as expeditiously as possible.

(b) Where subsurface rights are not available to the eligible regional corporations in lands whose surface has been conveyed under section 14 of the act, the regional corporations may select an equal subsurface acreage from lands withdrawn under sections 11(a) (1) and (3) of the act, within the region, if possible.

(c) As appropriate, the regional corporations will receive title to the subsurface estate of lands, the surface estate of which is conveyed pursuant to section 14 of the act.

(d) If a 13th regional corporation is organized under section 7(c) of the act, it will not be entitled to any grant of lands.

#### § 2652.2 Selection period.

All regional corporations must file their selection applications not later than December 18, 1975, for lands other than those allocated under section 14(h) (8) of the act.

#### § 2652.3 Selection limitations.

(a) To the extent necessary to obtain its entitlement, each regional corporation must select all available lands with-

drawn pursuant to sections 11(a)(1) (B) and (C) of the act, before selecting lands withdrawn pursuant to section 11(a)(3) of the act, except that regional corporations selecting lands withdrawn pursuant to sections 11(a)(1) (B) and (C) may select only even-numbered townships in even-numbered ranges and only odd-numbered townships in odd-numbered ranges.

(b) Village corporation selections within section 11(a)(1) and section 11(a)(3) areas shall be given priority over regional corporation selections for the same lands.

(c) Whenever a regional selection is made in any township, the regional corporation shall select all available lands in that township: *Provided*, That such selection would not exceed the entitlement of that regional corporation.

(d) Subsurface selections made by a regional corporation pursuant to section 12(a) of the act shall be contiguous and the total area selected shall be reasonably compact, except as separated by subsurface interests that are not the property of the United States including subsurface interests under bodies of water, and the selection shall be in whole sections where they are available, or shall include all available subsurface interests in less than whole sections and, wherever feasible, shall be in units of not less than 1,280 acres. The total area selected shall not be considered to be reasonably compact if (1) it excludes other subsurface interests available for selection within its exterior boundaries; or (2) an isolated tract of subsurface interests owned by the United States of less than 1,280 acres remains after selection.

(e) Regional corporations are not required to select lands within unpatented mining claims or millsites, as provided in § 2651.4(e) of this chapter.

(f) Regional corporations may file applications in excess of their total entitlement. To insure that a regional corporation acquires its selections in the order of its priorities, it should identify its choices numerically in the order it wishes them granted.

#### § 2652.4 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to regional corporations for

the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

### Subpart 2653—Miscellaneous Selections

#### § 2653.0-3 Authority.

Section 14(h) of the act requires the Secretary to withdraw and to convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 of the act. The Secretary will convey the land in part as follows:

(a) Title to existing cemetery sites and historical places to the regional corporations for the regions in which the lands are located;

(b) Title to the surface estate to any Native group that qualifies pursuant to this subpart 2653;

(c) Title to the surface estate of lands to the Natives residing in each of the cities of Sitka, Kenai, Juneau, and Kodiak, who have incorporated; and,

(d) Title to the surface estate of land to a Native as a primary place of residence.

#### § 2653.0-5 Definitions.

(a) "Cemetery site" means a burial ground consisting of the gravesites of one or more Natives.

(b) "Historical place" means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry.

(c) "Native group" means any tribe, band, clan, village, community or village association of Natives composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska.

(d) "Primary place of residence" means a place comprising a primary place of residence of an applicant on August 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

#### § 2653.1 Conveyance limitations.

(a) Under section 14(h) of the act, a total of 2 million acres may be selected for cemetery sites and historical places, Native groups, corporations formed by the Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for Native allotments approved as provided in section 18 of the act. Selections must be made within 4 years from December 18, 1971. Of this total amount: (1) 500,000 acres will be set aside to be used by the Secretary to satisfy applications filed pursuant to sections 14(h) (1), (2), and (5) of the act. The 500,000 acres will be allocated by: (i) Dividing 200,000 acres among the regions, based on population; and, (ii) dividing 300,000 acres equally among the regions; (2) 92,160 acres will be set aside for possible allocation by the Secretary to corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak; (3) 400,000 acres will be set aside to be used by the Secretary to satisfy Native allotment applications approved prior to December 18, 1975, under the act of May 17, 1906 (34 Stat. 197), the act of February 8, 1887 (24 Stat. 389), as amended and supplemented, and the act of June 25, 1910 (36 Stat. 863). Any Native allotment applications pending before the Bureau of Indian Affairs or the Bureau of Land Management on December 18, 1971, will be considered as "pending before the Department". Those allotment applications which have been determined to meet the requirements of the acts cited herein and for which survey has been requested before December 18, 1975, shall be considered "approved" under section 14(h)(6) of the act, and shall be charged against the acreage.

(b) After subtracting the number of acres used in accordance with allocations in paragraphs (a) (1), (2), and (3) of this section, from 2 million acres, the remainder will, after December 18, 1975, be reallocated by the Secretary among the regional corporations in accordance

with the provisions of section 14(h)(8) of the act.

(c) No Native allotment applications pending before the Secretary on December 18, 1971, will be rejected solely for the reason that the acreage set aside by paragraph (a)(3) of this section has been exhausted.

#### § 2653.2 Application procedures.

(a) All applications must be filed in accordance with the procedures in § 2650.2(a) of this chapter.

(b) Applications by corporations of Native groups under section 14(h)(2) and by a Native for a primary place of residence under section 14(h)(5) of the act must be accompanied by written concurrence of the affected regional corporation. In the case of Native groups, such concurrence must also indicate how much land per member of the Native group, not to exceed 320 acres per member, the regional corporation recommends that the Secretary convey. Any application not accompanied by the necessary concurrence and recommendation of the affected region will be rejected.

(c) Native groups, and Natives residing in Sitka, Kenai, Juneau, and Kodiak, as provided in sections 14(h) (2) and (3), respectively, must comply with the applicable terms of §§ 2650.2(a), (c), (d), (e), and (f) of this chapter.

(d) The filing of an application under the regulations of this section will constitute a request for withdrawal of the lands, and will segregate the lands from all other forms of appropriation under the public land law, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended, subject to valid existing rights, but will not segregate the lands from selections under section 12 or 16 of the act. The segregative effect of such an application will terminate if the application is rejected.

#### § 2653.3 Lands available for selection.

(a) Selections may be made for existing cemetery sites or historical places, Native groups, corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak, and for primary places of residence, from any lands which the Secretary may withdraw for those purposes out of the National Wild-

life Refuge System lands or the national forest lands which are outside of areas withdrawn by sections 11 and 16, as provided by section 14(h)(7) of the act.

(b) After December 18, 1975, selection of the lands allocated pursuant to § 2653.1(b), shall be made from any lands previously withdrawn under sections 11 or 16 of the act which are not otherwise appropriated. If the public lands withdrawn within the region pursuant to sections 11 or 16 of the act, and not otherwise appropriated, are insufficient for the selection of the full entitlement of the regional corporations pursuant to § 2653.1(b), then three times the amount of the entitlement which cannot be satisfied from lands previously withdrawn pursuant to sections 11 or 16 of the act will be withdrawn pursuant to section 14(h) of the act.

(c) A withdrawal made pursuant to section 17(d) (1) or (2) of the act shall not preclude a withdrawal pursuant to section 14(h) of the act.

#### § 2653.4 Termination of selection period.

Applications for selections under this subpart will be rejected after all allocated lands, as provided in § 2653.1, have been exhausted, or if the application is received after the following dates, whichever occurs first:

(a) As to primary place of residence—December 18, 1973.

(b) As to all recipients described in sections 14(h), (1), (2), and (3) of the act—December 18, 1975.

(c) As to all recipients under section 14(h)(8) of the act and § 2653.1(b)—December 18, 1977.

#### § 2653.5 Cemetery sites and historical places.

(a) The appropriate regional corporation may apply to the Secretary for the conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the act. The Secretary may give favorable consideration to these applications: *Provided*, That the Secretary determines that the criteria in these regulations are met: *And provided further*, That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely

as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in § 2653.9.

(b) The survey of selected sites shall include only the area actually used and a reasonable buffer zone, not over 66 feet wide around abandoned cemeteries; not over 330 feet wide around an area identified as an historical place; and an area to provide reasonable future expansion around active cemeteries.

#### § 2653.6 Native group selections.

(a) Native groups in existence on December 18, 1971, who incorporate in accordance with the laws of the State of Alaska may file applications to select the surface estate of not more than 7,680 acres.

(b) Native group selections must meet the criteria of compactness and contiguity specified in § 2651.4 (b) and (d) of this chapter.

(c) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less. Application must be for land in the area surrounding the locality in which the Native members of a group reside and are enrolled. Non-Native members of a group are not eligible for any benefit hereunder.

#### § 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located. After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may

select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

#### § 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

#### § 2653.8-1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land pursuant to sections 14 (c) (2), (h) (2), or 18 of the act.

#### § 2653.8-2 Primary place of residence criteria.

(a) *Periods of occupancy.*—Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.*—(1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches, etc.

(c) *Evidence of occupancy.* — Must have evidence of permanent or seasonal occupancy for substantial periods of time.

#### § 2653.9 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyances for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation grantee shall not authorize mining or mineral activities of any type, any commercial activities, or any other use which is incompatible with or is in derogation of the values

of the area as a cemetery site or historical place; and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in a conveyance pursuant to this subsection may be released by the Secretary, in his discretion, upon application of the regional corporation grantee showing that extraordinary circumstances, of a nature to warrant the release, have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4-6 of this chapter.

### Subpart 2654—Natives Reserves

#### § 2654.0-3 Authority.

Section 19(b) of the act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the act.

#### § 2654.0-5 Definitions.

"Reserve lands" means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the act.

#### § 2654.1 Exercise of option.

(a) Any village corporation which has not, by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However, when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined

on the basis of the roll of village residents proposed to be promulgated under 25 CFR 43h.7. The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and bylaws of the village corporation or corporations.

#### § 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to subpart 2651 of this chapter.

#### § 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the act.

### PART 2780—SPECIAL AREAS

#### Subpart 2781—Choctaw-Chickasaw

**AUTHORITY:** The provisions of this Subpart 2781 issued under sec. 1, 69 Stat. 445; 43 U.S.C. 1102.

**SOURCE:** The provisions of this Subpart 2781 appear at 35 F.R. 9626, June 13, 1970, unless otherwise noted.

#### § 2781.0-3 Authority.

(a) The act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which

were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the act of August 3, 1955 is referred to as "the act".

(b) The act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

#### § 2781.1 Disposal of surface fee.

Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of § 2781.1-1.

(b) Private sales to occupants under the regulations of § 2781.1-2.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 2781.1-2.

(d) Private sale of tracts under the provisions of the act of June 4, 1954 (68 Stat. 173; 42 U.S.C. 869) and the regulations thereunder (Part 2740 of this chapter).

#### § 2781.1-1 Sales to persons claiming a legal or equitable interest.

(a) Subparagraph 2(a)(2) of the act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2(a)(2) of the act, a claim of legal or

equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefore by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Authorizing officer of the proper office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of \$10 which will be non-returnable. The application must contain a description of the land claimed sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the proper office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice

published, showing that publication had been had for the required time.

(e) The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than a total of \$10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

#### § 2781.1-2 Sales to occupants.

(a) Subparagraph 2(b) of the act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949, or earlier.

(b) Before offering any tract at public sale, the authorizing officer at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of paragraphs 2781.1-1 (d) and (f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

#### § 2781.1-3 Public and subsequent private sales.

(a) Subparagraph 2(a)(1) of the act



authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the authorizing officer of the proper office at Santa Fe, New Mexico, may subject to the regulations in this part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized office of the Bureau of Land Management.

(c) The authorizing officer will cause a notice of sale to be published and posted consistent with the requirements of Subpart 2710 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. Bids may be made by the principal or his agent, either personally at the sale or by mail. Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. Sealed bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the

award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstractor, or (2) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Authorizing officer, Santa Fe Office, an amount equal to the price specified by the authorizing officer, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

#### § 2781.2 Leases and permits for non-mineral resources.

(a) Unless otherwise provided for by the regulations in this part, the Choctaw-

Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Subpart 2232.

(b) Leases and permits issued under paragraph (a)(2) of this section, will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraphs (a)(1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of part 2740, no particular form of application is required. The applicant, however, must describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of \$10 which will not be returnable.

#### § 2781.3 Deeds; disposition of minerals.

(a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445), will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing

laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (see Groups 3100 and 3800 of this chapter).

(c) Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

#### § 2781.4 Disposal of materials.

Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Parts 3600 and 5510 of this chapter.

#### § 2781.5 Rights-of-way.

Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Group 2800.

#### § 2781.6 Contributions and donations of money, services, and property.

(a) Section 6 of the act authorizes the Secretary of the Interior to accept contributions or donations of money, services, and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Authorizing officer of the proper office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors, purchaser, the usual cash certificates and receipts will be issued by the Bureau of Land Management, and should no objection appear patent will issue in due course of business.

## PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

### Subpart 2802—Procedures

SOURCE: The provisions of this Subpart 2802 appear at 35 F.R. 9635, June 13, 1970, unless otherwise noted.

#### § 2802.1-6 Indian lands.

The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 161.

## PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

### Subpart 3825—Papago Indian Reservation, Arizona

SOURCE: The provisions of this Subpart 3825 appear at 35 F.R. 9747, June 13, 1970, unless otherwise noted.

#### § 3825.0-3 Authority.

(a) The act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

#### § 3825.1 Mining locations in Papago Indian Reservation in Arizona.

(a) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining

laws and regulations thereunder, with the additional requirements prescribed in this section.

(b) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(c) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(d) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to \$1 for each acre and \$1 for each frac-

tional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(e) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(f) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the

terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(g) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(h) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

## TITLE 45—PUBLIC WELFARE

### CHAPTER I—OFFICE OF EDUCATION

#### PART 186—INDIAN ELEMENTARY AND SECONDARY SCHOOL AS- SISTANCE ACT

##### Subpart A—Scope; Definitions

Sec.

- 186.1 Scope.
- 186.2 Definitions.
- 186.3—186.10 [Reserved]

##### Subpart B—Applications; Use of Federal Funds

- 186.11 Applications.
- 186.12 Contents of applications.
- 186.13 Approval of applications.
- 186.14 Public hearings.
- 186.15 Parent committee nominations.
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##### Subpart C—Amount of Grants; Payments; Reallocations

- 186.21 Formula for determination of amount of grants for local educational agencies.
- 186.22 Assistance to nonlocal educational agencies.
- 186.23 Limitation with regard to eligibility of local educational agencies for State aid.
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- 186.25 Adjustments where necessitated by appropriations.
- 186.27—186.30 [Reserved]

##### Subpart D—General Provisions

Sec.

- 186.31 Retention of records.
- 186.32 Audits.
- 186.33 Limitations on costs.
- 186.34 Final accounting.

**AUTHORITY.**—Title IV of Public Law 92-318, 86 Stat. 334 (20 U.S.C. 241aa-241ff), unless otherwise noted.

**SOURCE:** 38 FR 18018, July 6, 1973, unless otherwise noted.

##### Subpart A—Scope and Definitions

###### § 186.1 Scope.

The regulations in this part govern the provision of financial assistance under the Indian Elementary and Secondary School Assistance Act, title III of Public Law 81-874, as added by part A of title

IV of Public Law 92-318 (the Indian Education Act).

###### § 186.2 Definitions.

As used in this part:

“The Act” means title III of Public Law 81-874, the Indian Elementary and Secondary School Assistance Act, as added by Public Law 92-318, part A, section 411(a).

(20 U.S.C. 241aa.)

“Child” means any child who is within the age limits for which the applicable State provides free public education.

(20 U.S.C. 244 (2).)

“Combined fiscal effort” means the expenditures per pupil by a local educational agency and the State with respect to the provision of free public education by that local educational agency other than expenditures from funds derived from Federal sources, such as funds under titles I, II, and III of the Elementary and Secondary Education Act, title III of the National Defense Education Act, title I of Public Law 81-874, and the Economic Opportunity Act.

(20 U.S.C. 241ee(b).)

“Commissioner” means the U.S. Commissioner of Education.

(20 U.S.C. 241aa.)

“Current expenditures” means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under title II of Public Law 81-874, or title II or III of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 244(5).)

“Elementary or secondary school” means a day or residential school which

provides elementary education or secondary education, as determined under State law, except that it does not include any education provided beyond grade 12. (20 U.S.C. 241aa.)

"Equipment" includes machinery and includes all other items of tangible personal property necessary for the functioning of a particular facility as a facility for the provision of educational and related services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials. Equipment does not include "supplies."

(20 U.S.C. 241cc(2).)

"Free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in an applicable State. Free public education may, if in accordance with State law, include education below grade 1 meeting the above criteria. (20 U.S.C. 244(4).)

"Indian" means any individual, living on or off a reservation, who: (a) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member; or (b) is considered by the Secretary of the Interior to be an Indian for any purpose; or (c) is an Eskimo or Aleut or other Alaska Native.

(20 U.S.C. 1221b.)

"Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a reservation, county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education.

(20 U.S.C. 241aa; 20 U.S.C. 244(6)(A), S. Rept. No. 92-384, 92d Cong., 1st Sess. 18 (1971).)

"Minor remodeling" means minor alterations, in a previously completed building, which are needed to make effective

use of equipment or personnel in space used or to be used for programs or projects meeting the assessed needs of Indian children. The term may include the extension of utility lines, such as for water and electricity, for points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of such previously completed building, to the extent needed to make effective use of the equipment. The term does not include structural alterations to buildings, building construction, maintenance, or repair.

(20 U.S.C. 241cc(2).)

"Nonlocal educational agency" means the governing body of a nonprofit institution or organization of an Indian tribe which operates for Indian children an elementary or secondary school or school system, located on or near a reservation, and which is not a local educational agency as defined herein.

(20 U.S.C. 241bb(b).)

"State aid" with respect to free public education means any contribution, no repayment for which is expected, made by a State to or on behalf of a local educational agency within the State for the support of free public elementary and secondary education.

(20 U.S.C. 241cc(b)(1).)

"State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(20 U.S.C. 244(7).)

## §§ 186.3—186.10 [Reserved]

### Subpart B—Applications; Use of Federal Funds

#### § 186.11 Applications.

A grant under the act to a local educational agency may be made only upon application to the Commissioner, on such forms as may be prescribed by him, when such application meets the requirements of this subpart.

(20 U.S.C. 241dd(a).)

#### § 186.12 Contents of applications.

An application, in accordance with section 305(a) of the act, shall:

(a) Provide that the activities and services for which assistance is sought

will be administered by or under the supervision of the applicant;

(20 U.S.C. 241dd(a)(1).)

(b) Set forth an elementary or secondary school program specially designed to meet the special educational needs of Indian students and provide for such methods of administration (both fiscal and educational) as are necessary for the proper and efficient operation of the program;

(20 U.S.C. 241dd(a)(2).)

(c) Provide that effective procedures, including provisions for appropriate objective measurement of educational achievement, will be adopted for evaluating at least annually the effectiveness of the applicant's programs and projects in meeting the special educational needs of Indian students;

(20 U.S.C. 241dd(a)(4).)

(d) Set forth policies and procedures which assure that Federal funds made available under the act for any fiscal year will be so used to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the education of Indian children and in no case supplant such funds; and

(20 U.S.C. 241dd(a)(5).)

(e) Provide for such fiscal control and fund accounting procedures by the applicant as are necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under the act, and for such reports as the Commissioner may require to carry out his functions under the act.

(20 U.S.C. 241dd(a)(6) and (a)(7); 20 U.S.C. 1232c.)

(f) In the case of an application for payments for planning, provide satisfactory assurance that:

(1) The planning was or will be directly related to programs or projects to be carried out under this part and has resulted, or is reasonably likely to result, in a program or project which will be carried out under this part; and

(2) The planning funds are needed because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary to plan adequately for programs and projects to be carried out under the act.

(20 U.S.C. 241dd(a)(3).)

### § 186.13 Approval of applications.

(a) *In general.* An application may be approved only if it is consistent with the applicable provisions of the act and this part and meets the requirements set forth in § 186.12 and in this section.

(b) *Utilization of talents; increase of educational opportunities.* An application shall provide satisfactory assurance that the program or project for which the application is made:

(1) Will utilize the best available talents and resources (including persons from the Indian community), and

(2) Will substantially increase educational opportunities of Indian children in the area to be served by the applicant. The talents and resources utilized to substantially increase educational opportunities of Indian children may include any individuals or organizations which have a particular and uncommon skill, ability, or delivery system, based on knowledge, assets, or existing capacities, to increase educational opportunities of Indian children. Educational opportunities may include, but shall not be limited to, instructional and supportive activities, services or experiences designed to meet the assessed needs of Indian children to be served in the application.

(20 U.S.C. 241dd(b)(2)(A).)

(c) *Consultation and hearings.* An application shall provide satisfactory assurance that the program or project for which application is made has been developed:

(1) In open consultation with parents of Indian children, teachers, and, where such program or project will serve secondary school students, Indian secondary school students, including not less than one public hearing at which such persons have been given a full opportunity to understand the program for which assistance is sought and to offer recommendations thereon; and

(2) With the participation and approval of a committee selected in accordance with §§ 186.15 and 186.16. Such assurance shall include at the minimum a description of the steps taken by the applicant to meet the requirements of this paragraph.

(20 U.S.C. 241dd(b)(2)(B).)

### § 186.14 Public hearings.

The public hearing required by § 186.13

(c)(1) shall provide an opportunity for discussion of, among other appropriate subjects:

(1) The adequacy of current programs to meet the special educational needs of Indian children enrolled in the local educational agency; and

(2) The manner in which the program or project for which application is made will be coordinated with other programs to meet the special educational needs of such children.

(20 U.S.C. 241dd(b)(2)(B)(i).)

**§ 186.15 Parent committee nominations.**

The committee formed for the purposes of § 186.13(c) (2) shall be nominated and selected by procedures appropriate to the Indian community to be served, such as sanction by the tribal governor where necessary. This committee shall be known as the "parent committee."

(a) Identification of individuals for consideration for membership on the committee shall not be determined by the applicant alone, but, to the extent practicable, shall be determined by consultation with such groups as parents of Indian children to be served, Indian tribes, tribal councils, institutions, and organizations which are part of the affected Indian community.

(b) The recommendation of such individuals by such groups shall be designed to result in the identification of persons representative of the interests of the Indian children to be served by the grant for which application is made.

(c) Representative factors in the nomination and selection of members of the parent committee shall include, but not be limited to, the following:

(a) Geographical location;

(b) Previous or current membership in a parent advisory committee;

(c) Experience with target schools;

(d) Prior school or community activity;

(e) Willingness to participate actively and make recommendations concerning the special educational needs of the Indian children to be served; and

(f) Representation of reservation and off-reservation Indian children where necessary.

(20 U.S.C. 241dd(b)(2)(B).)

**§ 186.16 Selection of parent committee.**

(a) The parent committee shall be selected by parents of the Indian children to be served, teachers and, where the program or project will serve secondary school students, Indian secondary school students.

(b) Selection of the parent committee shall not limit the continuing participation of the Indian community in the operation and evaluation of the program pursuant to § 186.17.

(c) The applicant will arrange the mechanism for selection procedures after consultation with the groups listed in § 186.15(a), and shall provide prior notice and dissemination of information to the community concerning the selection procedures.

(d) Membership of a parent committee shall be in proportion to the total number of Indian children to be served, with a maximum membership of 40 persons. The committee shall include only parents of the Indian children to be served, teachers, and where the program or project will serve secondary school students, Indian secondary school students, with parents constituting at least half of the members. Each member shall be designated by name and address in the application.

(20 U.S.C. 241dd(b)(2)(B)(ii).)

**§ 186.17 Procedures for community involvement.**

An application shall set forth policies and procedures assuring that the program will be operated and evaluated in consultation with, and the involvement of, parents of the Indian children and representatives of the area to be served, including the committee established under § 186.16. Such policies and procedures shall at a minimum include the provision by the local educational agency of the following:

(a) A repository available to the community of documentation concerning parent committee functions such as records of meetings, minutes of meetings, committee selection procedures, and a roster of committee membership;

(b) Dissemination and interpretations of bilingual proceedings and materials where necessary;

(c) An established role for the committee to be played in needs assessments,



and priority determinations for meeting such identified needs;

(d) Access by the committee to budget and financial reports and analyses to determine that grant funds are being used to supplement the level of funds available to the community for the education of Indian children;

(e) Planned activities to assure review of application implementation, ongoing review of program or project activities or services, and continuing analysis for evaluation and dissemination activities and other related programs and projects;

(f) Formal mechanism for written approval, by a majority of the committee voting in open session, of the application and of projects and activities to be implemented by the applicant which affect the community to be served.

(20 U.S.C. 241dd(b)(2)(B) and (c).)

#### § 186.18 Needs assessment.

In designing a program which meets the special educational needs of the Indian children to be served, the local educational agency (after consultation with the parent committee and the Indian community) must consider the inclusion of activities which build upon and support the heritage, traditions, and life-style of the community being served. The determination of those needs shall include consideration of such instructional or supportive services, activities, and experiences as the following:

(a) *Instructional services, activities and experiences.* (1) Arts (music, graphics, etc.);

(2) Language arts, including speech therapy, reading and language instruction such as bilingual or English as a second language programs;

(3) Vocational and industrial arts;

(4) Mathematics and natural science;

(5) Social sciences and humanities;

(6) Physical education; and

(7) Cultural enrichment.

(b) *Supportive activities, services or experiences.* (1) Academic guidance, counseling and testing;

(2) Use of dormitory and recreation facilities;

(3) Food and clothing;

(4) Medical and dental care;

(5) Psychological or psychiatric testing and care;

(6) Social work services;

(7) Pupil transportation; and

(8) Special services for physically handicapped and mentally retarded children.

(20 U.S.C. 241cc.)

#### § 186.19 Use of Federal funds.

(a) Grants under the Act may be used for

(1) The planning and development of programs specifically designed to meet the special educational needs of Indian children, including pilot projects designed to test the effectiveness of plans so developed; and

(2) The establishment, maintenance, and operation of programs specifically designed to meet the special educational needs of Indian children.

(b) Grants under the Act also may be used for the acquisition of necessary equipment, and for the minor remodeling of classroom or other space used for such programs currently meeting the special educational needs of Indian children.

(20 U.S.C. 241bb(a)(2)(B).)

#### Subpart C—Amount of Grant; Payments; Reallocations

#### § 186.21 Formula for determination of amount of grants for local educational agencies.

(a) For the purpose of computing the amount to which a local educational agency is entitled under the Act for any fiscal year ending prior to July 1, 1975, the Commissioner shall determine, on the basis of the most satisfactory data available, the number of Indian children who were enrolled in the schools of such agency and for whom such agency provided free public education, during such fiscal year.

(20 U.S.C. 241bb(a)(1).)

(b) The amount of the grant to which a local educational agency is entitled under the Act for any fiscal year shall be an amount equal to

(1) The average per pupil expenditure for such agency, as determined in accordance with paragraph (c) of this section, multiplied by

(2) The sum of the number of Indian children determined under paragraph (a) of this section.

(20 U.S.C. 241bb(a)(2)(A).)

(c) The average per pupil expenditure for a local educational agency shall be the aggregate current expenditures during the second fiscal year preceding the fiscal year for which the computation is made, for all of the local educational agencies in the State in which such agency is located, plus any direct current expenditures by such State for the operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), divided by the aggregate number of children who were in average daily membership in elementary and secondary schools for whom such agencies provided free public education during the second preceding fiscal year.

(20 U.S.C. 241bb(a)(2)(C).)

(d) Per pupil expenditure data for the purposes of this part shall be determined by the Commissioner on the basis of the best data available to him. Such data for the purposes of average per pupil expenditure determinations shall be in accordance with the provisions of section 303(a)(2)(C) of the act and of this subpart.

(20 U.S.C. 241bb(a)(2)(C).)

(e) A grant shall not be made to a local educational agency under the act unless the number of Indian children enrolled in the schools of that agency is at least 10 or constitutes at least 50 percent of that agency's total enrollment. This requirement shall not apply to local educational agencies serving Indian children in Alaska, California, and Oklahoma, or located on, or in proximity to, an Indian reservation. (For a local educational agency to be in proximity to an Indian reservation, the Indian child's attendance area must be within reasonable pupil transportation distance of the reservation lands, which determination shall be based on criteria including length of schoolday, route traveltime, and population density factors.)

(20 U.S.C. 241bb(a)(2)(B).)

#### § 186.22 Assistance to nonlocal educational agencies.

(a) The Commissioner may, in accordance with section 303(b) of the act, provide financial assistance to schools on or near reservations which are: (1) Non-local educational agencies or (2) local

educational agencies (i) which have not been local educational agencies for more than 3 years and (ii) which enroll a substantial proportion of Indian children.

(b) Assistance may be made available under this section to meet the costs of programs and projects which meet the purposes of this part, including costs incurred in connection with the establishment of such agencies. Applications for assistance under this section shall meet the appropriate requirements of subpart B of this part.

(20 U.S.C. 241bb(b); S. Rept. 92-346, 92d Cong., 1st Sess. 1971, p. 99.)

#### § 186.23 Limitation with regard to eligibility of local educational agencies for State aid.

No payment will be made under this part for any fiscal year to any local educational agency in a State which has taken into consideration payments under this part in determining the eligibility of such local educational agency in that State for State aid, or the amount of that aid, with respect to free public education of children during that year or the preceding fiscal year.

(20 U.S.C. 241ee(b)(1).)

#### § 186.24 Limitation with regard to combined fiscal effort.

(a) No payments under the act to any local educational agency in any State for any fiscal year may be made by the Commissioner unless the State educational agency of the respective State finds that the combined fiscal effort of that local educational agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort for that purpose for the second preceding fiscal year.

(b) Expenditures by a State with respect to a local educational agency, rather than by such a local educational agency itself, shall be deemed to have been maintained at the same level in the preceding fiscal year as in the second preceding fiscal year, unless the basis for making such expenditures has been altered or unless such expenditures are assumed by such a local educational agency. In such an event, the actual expenditures of that nature shall be taken into account in both years in determining combined fiscal effort.

(c) A combined fiscal effort in the preceding fiscal year shall not be deemed to be a reduction from that in the second preceding fiscal year unless the per pupil expenditure in the preceding fiscal year is less than that in the second preceding fiscal year by more than 5 percent. Any such reduction in fiscal effort by a local educational agency for any fiscal year by more than 5 percent will disqualify a local educational agency unless such agency demonstrates to the satisfaction of the State educational agency that such a reduction was the result of an unusual event, such as an unanticipated increase in school enrollment, that was beyond the control of the local educational agency, and that the fiscal effort of such agency does not otherwise indicate a diminished fiscal effort.

(20 U.S.C. 241ee(b)(2).)

#### § 186.25 Adjustment where necessitated by appropriations.

(a) *Ratable reductions.* As prescribed by section 307(a) of the act, if the sums appropriated for a fiscal year for making payments under this part are not sufficient to pay in full the total amounts which all local educational agencies are eligible to receive under this part for such fiscal year (as determined in accordance with § 186.21), the Commissioner will ratably reduce the maximum amounts which all such agencies are eligible to receive under this part for such year.

(20 U.S.C. 241ff(a).)

(b) *Reallocation of funds.* (1) In any fiscal year in which the maximum amounts for which local educational agencies are eligible under this part have been ratably reduced in accordance with paragraph (a) of this section (and in which additional funds have not been made available to pay in full such maximum amounts), the Commissioner shall fix a date or dates by appropriate notice for the reporting, by each local educational agency which is eligible for a grant under this part determined in accordance with § 186.21, of the amount of funds available to such agency under this part which it estimates it would expend under an approved application. If such agency is applying for a grant under this part, its estimate shall set forth a detailed projection of the amount it deems necessary for carrying out its

proposed project relative to the amount available to it under this part. The Commissioner shall, in fixing such date or dates, notify local educational agencies which are eligible for assistance under this part that the failure to file an application pursuant to subpart B of this part, by such date or dates, will result in the reallocation of the ratably reduced maximum amounts which such agencies are eligible to receive under this part to other eligible local educational agencies pursuant to this section.

(2) Following the submission of such reports, the Commissioner will determine those local educational agencies which will need additional funds to carry out approved applications under this part. Such additional funds may be allocated to such agencies by the Commissioner (i) from amounts which he determines in accordance with subparagraph (1) of this paragraph, will not be used by local educational agencies during their period of availability and (ii) from amounts which he determines would have been available to local educational agencies that did not submit approvable applications and will not be used by such agencies.

(3) No amount may be reallocated to a local educational agency under subparagraph (2) of this paragraph, if such amount, when added to the amount available to such agency in accordance with paragraph (a) of this section, exceeds the maximum grant for which such agency is eligible in accordance with § 186.21.

(20 U.S.C. 241ff.)

#### §§ 186.27–186.30 [Reserved]

### Subpart D—General Provisions

#### § 186.31 Retention of records.

(a) *Records.* Each recipient shall keep intact and accessible records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any, in accordance with section 434(a) of the General Education Provisions Act), including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award.

(b) *Period of retention.* (1) Except as provided in paragraphs (b)(2) and (d) of this section the records specified in paragraph (a) of this section shall be retained (a) for 3 years after the date of the submission of the final expenditure report, or (b) for grants and contracts which are renewed annually, for 3 years after the date of the submission of the annual expenditure report.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

(c) *Microfilm copies.* Recipients may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(d) *Audit questions.* The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(e) *Audit and examination.* The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all such records and to any other pertinent books, documents, papers, and records of the recipient.

(OMB Circular No. A-73; OMB Circular No. A-102, attachment C; 20 U.S.C. 1232c(a).)

### § 186.32 Audits.

(a) All expenditures by recipients shall be audited by the recipient or at the recipient's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws and regulations.

(b) The recipient shall schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, site, and complexity of the activity.

(c) Copies of audit reports shall be made available to the Commissioner to assure that proper use has been made of the funds expended. The results of such audits will be used to review the recipient's records and shall be made available to Federal auditors. Federal auditors shall be given access to such records or other documents as may be necessary to review the results of such audits.

(20 U.S.C. 1232c(b)(2); OMB Circular No. A-102, attachment G,2, attachment C,1.)

### § 186.33 Limitations on costs.

The amount of the award shall be set forth in the grant award document. The total cost to the Federal Government will not exceed the amount set forth in the grant award document or any modification thereof approved by the Commissioner which meets the requirements of applicable statutes and regulations. The Federal Government shall not be obligated to reimburse the recipient for costs incurred in excess of such amount unless and until the Commissioner has notified the recipient in writing that such amount has been increased and has specified such increased amount in a revised grant award document. Such revised amount shall thereupon constitute the revised total cost of the performance of the grant.

(20 U.S.C. 241aa.)

### § 186.34 Final accounting.

(a) In addition to such other accounting as the Commissioner may require the recipient shall render, with respect to the project, a full account of funds expended, obligated, and remaining.

(b) A report of such accounting shall be submitted to the Commissioner within 90 days of the expiration or termination of the grant or contract, and the recipient shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may be extended at the discretion of the Commissioner upon the written request of the recipient.

(20 U.S.C. 1232c(b)(3); 31 U.S.C. 628.)

## PART 187—FINANCIAL ASSISTANCE FOR THE IMPROVEMENT OF EDUCATIONAL FACILITIES FOR INDIAN CHILDREN

### Subpart A—Scope; Definitions

Sec.

187.1 Scope.

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### Subpart B—Applications for Financial Assistance

187.5 Eligibility for, and nature of, available assistance.

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187.7 Community participation.

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- 187.21 Criteria for consideration of applications.
- 187.22 Additional criteria for projects for improving educational opportunities.
- 187.23 Additional criteria for educational enrichment and exemplary programs.
- 187.24 Additional criteria for training programs or projects.
- 187.25 Additional criteria for projects for dissemination and evaluation.

**Subpart D—General Provisions**

- 187.31 Retention of records.
- 187.32 Audits.
- 187.33 Limitations on cost.
- 187.34 Final accounting.

**AUTHORITY.**—Sec. 810, Public Law 89-10, as amended, 86 Stat. 339 (20 U.S.C. 887c), unless otherwise noted.

**SOURCE:** 38 FR 19826, July 24, 1973, unless otherwise noted.

**Subpart A—Scope; Definitions****§ 187.1 Scope.**

This part governs the provision of assistance to State and local educational agencies; Indian tribes, organizations, and institutions; federally supported elementary and secondary schools for Indian children; and institutions of higher education for carrying out special programs and projects to improve educational opportunities for Indian children under section 810 of the Elementary and Secondary Education Act of 1965 (as added by § 421 of the Indian Education Act, title IV of Public Law 92-318).

(20 U.S.C. 887c.)

**§ 187.2 Definitions.**

As used in this part:

“Act” means section 810 of title VIII of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 887c.)

“Elementary school” means a day or residential school which provides elementary education including early childhood education, as determined under State law.

(20 U.S.C. 887c; 20 U.S.C. 881(c).)

“Equipment” includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services for Indian children, including items such as instructional equipment and necessary furni-

ture, printed, published and audiovisual instructional materials, and books, periodicals, documents, and other related materials.

(20 U.S.C. 881(d).)

“Exemplary,” as applied to an educational program, project, service, or activity, includes a program, project, service or activity designed to be so educationally effective or outstanding that it could be identified as a promising solution to a basic Indian educational problem.

(20 U.S.C. 887c(c).)

“Federally supported elementary and secondary school for Indian children” means an elementary or secondary school for Indian children operated or supported by the Department of the Interior.

(20 U.S.C. 887c(b).)

“Guidance and counseling” refers to (a) services to Indian pupils to assist them in assessing and understanding their particular abilities, educational needs, and career and vocational interests, and (b) assistance in personal and social development, including the development of a positive self-concept for Indian children and their parents.

(20 U.S.C. 887(c)(1)(D).)

“Handicapped children” means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children, who by reason thereof require special educational and related services.

(20 U.S.C. 887c(c)(1)(E).)

“Indian” means any individual, living on or off a reservation, who (a) is a member of a tribe, band or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (b) is considered by the Secretary of the Interior to be an Indian for any purpose, or (c) is an Eskimo or Aleut or other Alaska Native.

(20 U.S.C. 1221h.)

“Secondary school” means a day or residential school which provides secondary education, as determined under State law, except that such term does not include any education provided beyond grade 12.

(20 U.S.C. 881(h).)

### Subpart B—Applications for Financial Assistance

#### § 187.5 Eligibility for, and nature of, available assistance.

(a) *Demonstration projects for improving educational opportunities.* State and local educational agencies, federally supported elementary and secondary schools for Indian children, and Indian tribes, organizations and institutions may apply for grants to support planning, pilot and demonstration projects which are designed to plan for, and test and demonstrate the effectiveness of, programs (including early childhood programs) for improving educational opportunities for Indian children.

(20 U.S.C. 887c(a)(1) and (b).)

(b) *Educational enrichment and exemplary programs.* State and local educational agencies, and tribal and other Indian community organizations may apply for grants to assist them (1) to provide educational services not available to Indian children in sufficient quantity or quality (such as programs described in section 810(c)(1) of the Act); or (2) to establish and operate exemplary and innovative educational programs and centers which involve new educational approaches, methods, and techniques designed to enrich programs of elementary and secondary education for Indian children and which will serve as models for regular elementary and secondary school programs in which Indian children are educated.

(20 U.S.C. 887c(a)(2) and (c).)

(c) *Training.* Institutions of higher education (as defined in section 801(e) of the Elementary and Secondary Education Act) and State and local educational agencies in combination with institutions of higher education, may apply for grants to assist them in carrying out programs or projects (1) to prepare persons to serve Indian children as teachers, teacher aides, social workers, or ancillary educational personnel, and (2) to improve the qualifications of such persons who are serving Indian children in such capacities.

(20 U.S.C. 887c(a)(3) and (d), and 881(e).)

(d) *Dissemination and evaluation.* Public agencies and institutions, and Indian tribes, institutions and organizations may apply for assistance (by grant or contract) for carrying out programs

or projects to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, educational programs which may offer educational opportunities to Indian children.

(20 U.S.C. 887c (a)(4) and (e).)

#### § 187.6 Applications.

Any eligible group, tribe, organization, or school or school system may submit an application for assistance under this part which shall set forth (a) the problem to be addressed, (b) the overall objectives of the proposed program or project, (c) the manner in which the proposed program or project carries out the purpose, as set forth in § 187.5, to which it relates, (d) the type and size of the proposed staff (including the staff training proposed), (e) the amount of the grant being requested, and such other information as the Commissioner may require. The description of the proposed program or project in the application shall also include a specific discussion of the manner in which the program or project relates to the applicable criteria set forth in subpart C. The application shall also describe methods of administration which will provide proper and efficient administration of the program or project for which assistance is requested.

(20 U.S.C. 887c(f).)

#### § 187.7 Community participation.

Applications under § 187.5 (a) and (b) must describe the manner in which parents of the Indian children to be served and tribal communities: (a) Were consulted and involved in the planning and development of the project; and (b) will be actively participating in the further planning, development, operation, and evaluation of the project.

(20 U.S.C. 887c(f).)

#### § 187.8 Coordination of resources.

Applications for assistance under § 187.5(b) (educational enrichment and exemplary programs) must contain an assurance that the program or project to be assisted will be coordinated with programs or projects carried out with other resources which may be available to the applicant in order that funds under this part and those other resources will be used for a comprehensive program for the improvement of educational

opportunities of Indian children.  
(20 U.S.C. 887c(f)(2).)

#### § 187.9 Training of personnel.

Applications under § 187.5(b) (relating to educational enrichment and exemplary programs) must provide a description of the methods to be used for the training of personnel who will be participating in the project. Before he may approve an application under § 187.5(b), the Commissioner must be satisfied that such methods are adequate for the purpose of carrying out the project.

(20 U.S.C. 887c(f)(3).)

#### § 187.10 Indian preference.

(a) In approving applications under this part, the Commissioner will give priority to applications submitted by Indian educational agencies, organizations, and institutions.

(b) In approving applications under § 187.5(c), the Commissioner will give preference to those projects which involve the training of Indians. In carrying out an approved project the applicant shall give preference to the training of Indians.

(20 U.S.C. 887c(f).)

#### § 187.11 Evaluation.

An application under this part must contain an assurance to the Commissioner that (a) the applicant will arrange for an independent and objective evaluation of the effectiveness of the project in achieving its purposes and the purposes of the act, and (b) the applicant will cooperate with any evaluation conducted or arranged by the Commissioner.

(20 U.S.C. 887c(f)(4).)

### Subpart C—Criteria for Assistance

#### § 187.21 Criteria for consideration of applications.

In considering whether to approve applications and in determining the amount of the award under approved applications, the Commissioner will take into account the following general criteria:

(a) The number of Indian children involved in the program or project and number of children that would be affected by a successful outcome of the program or project;

(b) The degree to which the program or project to be assisted addresses the

particular educational needs of Indian children;

(c) The relative isolation (geographic or social) of the Indian community which will be served by the program or project;

(d) The degree to which the activities supported under this part will be coordinated with other activities to meet the special educational needs of Indian children (including program supported under part A of the Indian Education Act, the Elementary and Secondary Education Act, and the Vocational Education Act);

(e) The adequacy of the qualifications and experience of the personnel designated to carry out the proposed project;

(f) The adequacy of facilities and other resources;

(g) The reasonableness of the estimated cost in relation to the anticipated results;

(h) The expected potential for utilizing the results of the proposed project in other projects or programs for similar educational purposes;

(i) The sufficiency of the size, scope, quality, and duration of the program or project so as to secure productive results; and

(j) The soundness of the proposed plan of operation, including consideration of the extent to which:

(1) The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures, and capable of being measured or evaluated;

(2) Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished;

(3) Where appropriate, provision is made for inservice training connected with project services; and

(4) Provision is made for disseminating the results of the project and for making materials and techniques resulting therefrom available to the general public and those concerned with education of Indian children.

(20 U.S.C. 887c.)

#### § 187.22 Additional criteria for projects for improving educational opportunities.

(a) In considering whether to approve applications submitted under § 187.5(a),

and in determining the amount of the awards under those applications, the Commissioner will take into account the following criteria (in addition to the criteria set forth in § 187.21):

(1) The degree to which the project addresses a demonstrated and substantial educational need of Indian children which is not being adequately met by projects supported with resources under other Federal, State, or local programs;

(2) The degree to which the successful carrying out of the project will measurably contribute to improving the educational opportunities of Indian children throughout the Nation;

(3) The numbers of Indian children who are estimated to require educational or other related services or programs of the kind which will be demonstrated or improved by the proposed project;

(4) In the case of projects which address themselves primarily to academic needs, the degree to which the level of academic achievement of Indian children is likely to be improved by the carrying out or replication of the results of the proposed project;

(5) The degree of innovation of the proposed project; and

(6) The degree to which the project can be replicated for the purpose of providing educational services or programs for Indian children.

(b) In considering applications under this section priority will be given to projects which will provide models for coordinating the operation, at the local level, of federally assisted programs or projects designed to assist in meeting the educational needs of Indian children.

(20 U.S.C. 887c(b).)

#### § 187.23 Additional criteria for educational enrichment and exemplary programs.

(a) In considering whether to approve applications submitted under § 187.5(b) and in determining the amount of the awards under those applications, the Commissioner will take into account the following criteria (in addition to the criteria set forth in § 187.21):

(1) The degree to which the application demonstrates that the services to be stimulated by the project are not available in sufficient quantity or quality to the Indian children to be served;

(2) The significance, in terms of long term improvement of the educational opportunities of Indian children, of the provision of the educational service, or the widespread application of the exemplary program, for which assistance is requested;

(3) In the case of an exemplary educational program, the degree to which the application demonstrates that the educational approach, method, or technique involved in the program has not previously been tested or applied in the education of Indian children;

(4) The extent to which the program or project involves Indian parents in the educational process and demonstrates new methods for involving those parents generally in activities to meet the educational needs of Indian children.

(b) In considering applications under § 187.5(b), priority will be given to (1) programs which are directed at meeting the needs of Indian children who are handicapped; (2) programs designed to assist and encourage Indian children to enter, remain in, or reenter elementary or secondary school; and (3) programs designed to assist Indian children to prepare to enter postsecondary or career education programs.

(20 U.S.C. 887c(c).)

#### § 187.24 Additional criteria for training programs or projects.

(a) In addition to the criteria set forth in § 187.21, the Commissioner will apply the following criteria in evaluating applications submitted under § 187.5(c):

(1) The need with regard to Indian education for the type of educational or other personnel for which the training is provided;

(2) The likelihood that the training to be assisted will be applied to meet the educational needs of Indian children;

(3) The degree to which the training will involve educational approaches which take into account the culture and heritage of Indian children; and

(4) The degree to which the training program focuses on approaches, methods, and techniques which are pertinent to the education of Indian children.

(b)(1) Assistance under § 187.5(c) is available for the establishment of fellowship programs leading to an advanced degree; for institutes and for seminars,



symposia, workshops, and conferences which are part of a continuing program.

(2) In providing assistance under § 187.5(c), projects including inservice training for qualified persons already serving in the education of Indian children and projects involving short-term training (6 months or less) will be given special consideration.

(20 U.S.C. 887c(a)(3); 887c(d).)

#### § 187.25 Additional criteria for projects for dissemination and evaluation.

In the evaluation of applications for assistance under § 187.5(d), priority will be given to projects involving the dissemination of information and materials relating to, and the evaluation of the effectiveness of, academic programs and educational services which affect academic achievement in basic educational areas (such as reading, language arts, mathematics, and sciences).

(20 U.S.C. 887c(e).)

### Subpart D—General Provisions

#### § 187.31 Retention of records.

(a) *Records.* Each recipient shall keep intact and accessible records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any, in accordance with section 434(a) of the General Education Provisions Act), including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award.

(b) *Period of retention.* (1) Except as provided in paragraphs (b)(2) and (d) of this section the records specified in paragraph (a) of this section shall be retained (i) for 3 years after the date of the submission of the final expenditure report, or (ii) for grants and contracts which are renewed annually, for 3 years after the date of the submission of the annual expenditure report.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

(c) *Microfilm copies.* Recipients may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(d) *Audit questions.* The records in-

volved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(e) *Audit and examination.* The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all such records and to any other pertinent books, documents, papers, and records of the recipient.

(OMB Circular No. A-73; OMB Circular No. A-102, attachment C; 20 U.S.C. 1232c(a).)

#### § 187.32 Audits.

(a) All expenditures by recipients shall be audited by the recipient or at the recipient's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws and regulations.

(b) The recipient shall schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, site, and complexity of the activity.

(c) Copies of audit reports shall be made available to the Commissioner to assure that proper use has been made of the funds expended. The results of such audits will be used to review the recipient's records and shall be made available to Federal auditors. Federal auditors shall be given access to such records or other documents as may be necessary to review the results of such audits.

(20 U.S.C. 1232c(b)(2); OMB Circular No. A-102, attachment G, 2, attachment C, 1.)

#### § 187.33 Limitations on costs.

The amount of the award shall be set forth in the grant award document. The total cost to the Federal Government will not exceed the amount set forth in the grant award document or contract or any modification thereof approved by the Commissioner which meets the requirements of applicable statutes and regulations. The Federal Government shall not be obligated to reimburse the recipient for costs incurred in excess of such amount unless and until the Commissioner has notified the recipient in writing that such amount has been increased and has specified such increased amount in a revised grant award document. Such revised amount shall thereupon consti-

tute the revised total cost of the performance of the grant.

(20 U.S.C. 887c.)

#### § 187.34 Final accounting.

(a) In addition to such other accounting as the Commissioner may require the recipient shall render, with respect to the project, a full account of funds expended, obligated, and remaining.

(b) A report of such accounting shall be submitted to the Commissioner within 90 days of the expiration or termination of the grant or contract, and the recipient shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may be extended at the discretion of the Commissioner upon the written request of the recipient.

(20 U.S.C. 1232c(b)(3); 31 U.S.C. 623.)

### PART 188—FINANCIAL ASSISTANCE FOR THE IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR ADULT INDIANS

#### Subpart A—Scope; Definitions

Sec.

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#### Subpart B—Applications for Financial Assistance

188.5 Eligibility for, and nature of, available assistance.

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188.15 General criteria for consideration of applications.

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188.21 Retention of records.

188.22 Audits.

188.23 Limitations on costs.

188.24 Final accounting.

**AUTHORITY.**—Sec. 314. Public Law 89-750, as amended, 86 Stat. 342 (20 U.S.C. 1211a), unless otherwise noted.

**SOURCE:** 38 FR 19829, July 24, 1973, unless otherwise noted.

#### Subpart A—Scope; Definitions

##### § 188.1 Scope.

(a) This part governs the provision of assistance to State and local educational

agencies, to Indian tribes, institutions, and organizations, and to public agencies and institutions to support planning, pilot, and demonstration projects which are designed to plan for, and test and demonstrate the effectiveness of, programs for improving educational opportunities for adult Indians under section 314 of the Adult Education Act (as added by section 431 of the Indian Education Act, title IV of Public Law 92-318).

(b) Assistance provided under this part is subject to applicable provisions contained in section 303 of the Adult Education Act (20 U.S.C. 1202) and regulations thereunder.

(20 U.S.C. 1211a.)

##### § 188.2 Definitions.

“Act” means section 314 of the Adult Education Act (20 U.S.C. 1201).

(20 U.S.C. 1211a.)

“Adult” means any individual who has attained the age of 16.

(20 U.S.C. 1202(a).)

“Adult education” means services or instruction below the college level, for adults who (1) do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education, and (2) are not currently required to be enrolled in schools.

(20 U.S.C. 1202(b).)

“Indian” means any individual, living on or off a reservation, who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native.

(20 U.S.C. 1221h.)

#### Subpart B—Applications for Financial Assistance

##### § 188.5 Eligibility for, and nature of, available assistance.

(a) *Planning, pilot, and demonstration projects.* State educational agencies (as defined in 20 U.S.C. 1202(g)) and local educational agencies (as

defined in 20 U.S.C. 1202(e) ), and Indian tribes, institutions, and organizations may apply for grants to support planning, pilot, and demonstration projects which are designed to plan for, and test and demonstrate the effectiveness of, programs for providing adult education for Indians. Such projects may be designed (1) to test and demonstrate the effectiveness of programs to improve employment and educational opportunities; (2) to assist in the establishment and operation of programs designed to stimulate the provision of (i) basic literacy opportunities to all nonliterate Indian adults, and (ii) high school equivalency opportunities in the shortest period of time feasible; (3) to support a major research and development program to develop more innovative and effective techniques for achieving the literacy and high school equivalency goals; (4) to provide for basic surveys (and evaluations of such surveys) to define accurately the extent of the problems of illiteracy and lack of high school completion on Indian reservations; and (5) to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, education programs which may offer educational opportunities to Indian adults.

(20 U.S.C. 1211a(a).)

(b) *Dissemination and evaluation projects.* The Commissioner may also make grants to, and contracts with, public agencies and institutions, and Indian tribes, institutions, and organizations for (1) the dissemination of information concerning educational programs, services, and resources available to Indian adults, including evaluations thereof; and (2) the evaluation of the effectiveness of federally assisted programs (in which Indian adults may participate) in achieving their purposes with respect to such adults.

(20 U.S.C. 1211a(b).)

(c) *Special considerations applicable to assistance for fiscal year 1973.* For fiscal year 1973 it is expected that only a very limited number of grants will be made under the program and that the Commissioner will be unable to make grants in all the categories set forth in paragraphs (a) and (b) of this section. (The fiscal year 1973 appropriation for the program is \$500,000.) Under these

circumstances the Commissioner will give special consideration to (1) projects to provide a basic survey (and evaluation thereof) designed to define the extent of the problems of adult illiteracy and lack of high school completion on Indian reservations, and (2) demonstration projects to develop model programs for the achievement of basic literacy or high school equivalency which meet the special needs of Indian adults.

(20 U.S.C. 1211a.)

#### § 188.6 Applications.

Any party eligible for assistance under this part may submit an application therefor on such forms as may be prescribed by the Commissioner. Such application shall set forth (a) the problem to be addressed; (b) the overall objectives of the proposed project; (c) the activities to be carried out; (d) the manner in which the proposed project carries out the purpose, as set for in § 188.5, to which it relates; (e) the type and size of the staff envisioned; (f) the amount of the assistance being requested; and (g) such other information as the Commissioner may require. The description of the proposed project in such application shall also include a specific discussion of the manner in which such project relates to the applicable criteria set forth in subpart C of this part. The application shall also provide for such methods of administration as are necessary for the proper and efficient administration of the project for which assistance is requested.

(20 U.S.C. 1211a(c).)

#### § 188.7 Community participation.

Applications submitted under § 188.5 (a) must describe the manner in which individuals to be served and tribal communities (a) participated in the planning and development of the project, and (b) will be actively participating in the further planning, development, operation, and evaluation of the project. (See section 314(c) of the act.)

(20 U.S.C. 1211a(c).)

#### § 188.8 Indian preference.

In approving applications under § 188.5(a) the Commissioner will give priority to applications submitted by Indian educational agencies, organizations, and institutions.

(20 U.S.C. 1211a(c).)

**§ 188.9 Evaluation.**

An application under this part must contain an assurance to the Commissioner that (a) the applicant will arrange for an independent and objective evaluation of the effectiveness of the project in achieving its purposes and the purposes of the act, and (b) the applicant will cooperate with any evaluation conducted or arranged by the Commissioner. (20 U.S.C. 1211a(c)(2).)

**Subpart C—Criteria for Assistance****§ 188.15 General criteria for consideration of applications.**

In considering whether to approve applications, and in determining the amount of the award under approved applications, the Commissioner will take into account the following general criteria:

(a) The degree to which the program or project to be assisted will involve the use of innovative methods, systems, materials, or programs which may be of special value in developing effective programs for improving employment and educational opportunities for adult Indians;

(b) The extent to which activities supported under this part will be coordinated with other programs to improve educational and employment opportunities of adult Indians (including programs supported under the Adult Education Act and the Vocational Education Act);

(c) The adequacy of the qualifications and experience of the personnel designated to carry out the proposed projects;

(d) The adequacy of facilities and other resources;

(e) The reasonableness of the estimated cost in relation to the anticipated results; and

(f) The soundness of the proposed plan of operation, including consideration of the extent to which:

(1) The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures, and capable of being measured or evaluated;

(2) Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent

to which the objectives are accomplished;

(3) Where appropriate, provision is made for satisfactory inservice training connected with project services; and

(4) Provision is made for disseminating the results of the project and for making materials and techniques resulting therefrom available to the general public and specifically to all those concerned with education of Indian adults. (20 U.S.C. 1211a.)

**§ 188.16 Additional criteria for survey and evaluation projects.**

In the evaluation of applications submitted under § 188.5(a)(4) to provide basic surveys and evaluations thereof to define the extent of the problems of illiteracy and lack of completion of high school on Indian reservations, the Commissioner will take into account the following criteria (in addition to those contained in § 188.15):

(a) The adequacy of the survey instrument and data collection system to be used;

(b) The adequacy of the methods proposed for processing, analyzing, and evaluating the data to be obtained, and for making available the results thereof; and

(c) The adequacy of the plan for administration of the survey, including:

(1) The personnel to be used; (2) the comprehensiveness of the survey sample; (3) the number of Indian adults to be surveyed; (4) the practicability of the time schedule to be followed relative to the proposed survey procedures; and (5) the provision for verification by the project director of the validity of the survey. (20 U.S.C. 1211a(a)(4).)

**Subpart D—General Provisions****§ 188.21 Retention of records.**

(a) *Records.* Each recipient shall keep intact and accessible records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any, in accordance with section 434(a) of the General Education Provisions Act), including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award.

(b) *Period of retention.* (1) Except as provided in paragraphs (b)(2) and (d) of this section the records specified in paragraph (a) of this section shall be retained (i) for 3 years after the date of the submission of the final expenditure report, or (ii) for grants and contracts which are renewed annually, for 3 years after the date of the submission of the annual expenditure report.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

(c) *Microfilm copies.* Recipients may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(d) *Audit questions.* The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(e) *Audit and examination.* The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all such records and to any other pertinent books, documents, papers, and records of the recipient.

(OMB Circular No. A-73; OMB Circular No. A-102, attachment C; 20 U.S.C. 1232c(a).)

#### § 188.22 Audits.

(a) All expenditures by recipients shall be audited by the recipient or at the recipient's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws and regulations.

(b) The recipient shall schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, site, and complexity of the activity.

(c) Copies of audit reports shall be made available to the Commissioner to

assure that proper use has been made of the funds expended. The results of such audits will be used to review the recipient's records and shall be made available to Federal auditors. Federal auditors shall be given access to such records or other documents as may be necessary to review the results of such audits.

(20 U.S.C. 1232c(b)(2); OMB Circular No. A-102, attachment C, 2, attachment C, 1.)

#### § 188.23 Limitations on costs.

The amount of the award shall be set forth in the grant award document or contract. The total cost to the Federal Government will not exceed the amount set forth in the grant award document or contract or any modification thereof approved by the Commissioner which meets the requirements of applicable statutes and regulations. The Federal Government shall not be obligated to reimburse the recipient for costs incurred in excess of such amount unless and until the Commissioner has notified the recipient in writing that such amount has been increased and has specified such increased amount in a revised grant award document or contract. Such revised amount shall thereupon constitute the revised total cost of the performance of the grant.

(20 U.S.C. 1211a.)

#### § 188.24 Final accounting.

(a) In addition to such other accounting as the Commissioner may require the recipient shall render, with respect to the project, a full account of funds expended, obligated, and remaining.

(b) A report of such accounting shall be submitted to the Commissioner within 90 days of the expiration or termination of the grant or contract, and the recipient shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may be extended at the discretion of the Commissioner upon the written request of the recipient.

(20 U.S.C. 1232c(b)(3); 31 U.S.C. 628.)

# TITLE 50—WILDLIFE AND FISHERIES

## CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE

### SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

#### PART 11—PROTECTION OF BALD EAGLES AND GOLDEN EAGLES

Sec.

11.1 Eagles protected.

\* \* \*

11.5 Possession and use for religious purposes.

11.6 Applications for permits.

11.7 Permit requirements.

\* \* \*

11.9 Jurisdiction and address of regional or area offices.

AUTHORITY: The provisions of this Part 11 issued under sec. 2, 54 Stat. 251, as amended; 16 U.S.C. 668a.

SOURCE: The provisions of this Part 11 appear at 31 F.R. 16011, Dec. 15, 1966, unless otherwise noted.

#### § 11.1 Eagles protected.

The taking, possession, or transportation of the bald eagle (*Haliaeetus leucocephalus*), commonly known as the American eagle, or the golden eagle (*Aquila chrysaetos*), or their parts, nests, or eggs is prohibited, except as permitted in this part. No bald eagle or golden eagle, or their parts, nests, or eggs may be purchased, sold, traded, or bartered, or offered for sale, trade, or barter in the United States or in any place subject to its jurisdiction.

\* \* \* \* \*

#### § 11.5 Possession and use for religious purposes.

Whenever the Secretary determines that the taking and possession of bald or golden eagles for the religious purposes of Indian tribes is compatible with the preservation of such birds, he may issue permits for such taking and possession to those individual Indians who are authentic, bona fide practitioners of such religion. Any birds or their parts taken or possessed under permits issued pursuant to this section are not transferable, except such birds or their parts may be handed down from generation to genera-

tion or from one Indian to another in accordance with tribal or religious customs.

#### § 11.6 Applications for permits.

(a) Applications for permits must be addressed to the Regional Director at the Regional Office of the Bureau of Sport Fisheries and Wildlife having administrative supervision over Bureau functions in the State in which permit activities are proposed. (See § 11.9 of this part for addresses.)

\* \* \* \* \*

(d) Applications for permits to take and possess bald eagles or golden eagles for the religious purposes of Indian tribes must be submitted by individual Indians. Such applications must state the name and address of the applicant, his age, the name of his tribe, the species and number of eagles proposed to be taken, and the State and area where taking is to be done. Further, the applicant must name the religious ceremony for which such eagles or their parts will be used and must enclose a statement from a duly authorized official of the religious group in question verifying that the applicant is authorized to participate in such ceremonies.

#### § 11.7 Permit requirements.

(a) Any permit issued pursuant to this part will specify the date of issue and expiration, the number of bald eagles or golden eagles or their nests or eggs that may be taken, the person or persons who may take such eagles or their nests or eggs, the places where, the time when, the means or methods by which they may be taken, and the disposition or utilization to be made of such birds, nests, or eggs.

(b) Permits issued under this part are not transferable. In addition to other penalties prescribed for violation of regulations in this part, permits may be revoked at any time by the Regional Director for violation of any requirements of the permit or the provisions of this part. If revoked, they must be surrendered on demand. Within thirty (30) days after the expiration date, the holder must complete and mail to the Regional Director a report of his activities on a form provided for this purpose.

(c) Nothing in this part or in any permit issued thereunder authorizes the taking, possession, or transportation of bald eagles or golden eagles, or their parts, nests, or eggs in any State contrary to the laws and regulations of that State: *Provided*, Such laws and regulations are for the purpose of giving further protection to such eagles and are not inconsistent with the provisions of any Federal law for the protection of such birds. Further, no permit issued under this part authorizes the taking, possession, or transportation of bald eagles or golden eagles or their parts, nests, or eggs unless the holder also possesses whatever permit may be required for such activities by the State concerned.

\* \* \* \* \*

#### § 11.9 Jurisdiction and address of regional or area offices.

The geographic jurisdiction and addresses of the Bureau of Sport Fisheries and Wildlife regional or area offices are as follows:

(a) Alaska Area Office (comprising the State of Alaska), 6917 Seward Highway, Anchorage, Alaska 99502.

(b) Pacific Region (Region 1—comprising the States of California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) Post Office Box 3737, Portland, Ore. 97208.

(c) Southwest Region (Region 2—comprising the States of Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, and Wyoming) Post Office Box 1306, Albuquerque, N. Mex. 87103.

(d) North Central Region (Region 3—comprising the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin) Federal Build-

ing, Fort Snelling, Twin Cities, Minn. 55111.

(e) Southeast Region (Region 4—comprising: (1) The States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia; and (2) The District of Columbia, Puerto Rico, and the Virgin Islands), Peachtree-Seventh Building, Atlanta, Ga. 30323.

(f) Northeast Region (Region 5—comprising the States of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia) U.S. Post Office and Courthouse, Boston, Mass. 02109.

[35 F.R. 11633, July 21, 1970; 35 F.R. 12658, Aug. 8, 1970]

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## PART 18—MARINE MAMMALS

### Subpart A—Introduction

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AUTHORITY: Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 USC 1361 note, Public Law 92-522.

SOURCE: 37 F.R. 28173, Dec. 21, 1972, unless otherwise noted.

### Subpart A—Introduction

#### § 18.1 Purpose of regulations.

The regulations contained in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, —U.S.C. —, Public Law 92-522, which among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

#### § 18.2 Scope of regulations.

This Part 18 applies solely to marine mammals and marine mammal products as defined in § 18.3. For regulations under the Act with respect to other marine mammals and marine mammal products, see 50 CFR Part 216.

#### § 18.3 Definitions.

In addition to definitions contained in the Act and unless the context otherwise requires, in this Part 18:

“Act” means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law 92-522.

“Alaskan Native” means a person defined in the Alaska Native Claims Settlement Act [43 U.S.C. section 1603 (b) (85 Stat. 588)] as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any such citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

“Authentic native articles of handicrafts and clothing” means items which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) which are produced, decorated, or fashioned in the exercise of traditional native

handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices, or other improved methods of production utilizing modern implements, such as sewing machines. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

“Endangered species” means a species or subspecies of marine mammal listed pursuant to the Endangered Species Conservation Act of 1969 (See Part 17 of this subchapter).

“Marine mammal” means a specimen of the following species or subspecies of mammal, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed, or dyed fur or skin:

Scientific name	Common name
<i>Ursus maritimus</i> .....	Polar bear.
<i>Enhydra lutris lutris</i> .....	Northern sea otter.
<i>Enhydra lutris nereis</i> .....	Southern sea otter.
<i>Odobenus rosmarus</i>	
<i>rosmarus</i> .....	Atlantic walrus.
<i>Odobenus rosmarus</i>	
<i>divergens</i> .....	Pacific walrus.
<i>Dugong dugong</i> .....	Dugong.
<i>Trichechus manatus</i> .....	West African manatee.
<i>Trichechus inunguis</i> .....	West Indian manatee.
<i>Trichechus senegalensis</i> .....	Amazonian manatee.

NOTE: Common names given may be at variance with local usage, they are not required to be provided by the Act, and they have no legal significance.

“Native village or town” means any tribe, band, clan, group, village, community, or association in Alaska which the Alaska Native Claims Settlement Act or the Secretary finds eligible for land conveyances under subsection 14(a) of that Act.

“Pregnant” means pregnant near term.

“Subsistence” means the use by Alaskan Natives of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain life of the taker or for those who depend upon the taker to provide them with such subsistence.

“Take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal, including, without limitation, any of the following: The restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the operation of an aircraft or vessel, or the doing of any other acts which results



in the disturbing or molesting of a marine mammal.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

\* \* \* \* \*

### Subpart C—General Exceptions

#### § 18.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking or importation of marine mammals or marine mammal products, which was existent and in force prior to December 21, 1972, and to which the United States was a party.

\* \* \* \* \*

#### § 18.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 18, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska and such taking is for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken pursuant to this section may be sold or otherwise transferred to any person other than an Indian, Aleut, or Eskimo, or delivered, carried, transported, or shipped in interstate or for-

eign commerce by any person, unless:

(i) It has first been transformed into an authentic native article or handicraft or clothing, or

(ii) It is an edible portion and sold in Alaskan native villages and towns.

(2) No person who is not an Indian, Aleut, or Eskimo may purchase or otherwise acquire, or possess any marine mammal taken pursuant to this section except as permitted in this subsection.

(3) No person shall use any aircraft to take any marine mammal in violation of 16 U.S.C. 742j-1, 85 Stat. 480, Public Law 92-159.

(c) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

\* \* \* \* \*

## PART 20—MIGRATORY BIRD HUNTING

### Subpart A—Introduction

Sec.

20.1

Scope of regulations.

\* \* \* \* \*

### Subpart L—Administrative and Miscellaneous Provisions

#### 20.132 Subsistence use in Alaska.

\* \* \* \* \*

AUTHORITY.—Migratory Bird Treaty Act, section 3, 40 Stat. 755.

SOURCE: Redesignated from Part 10 and revised at 38 F.R. 22021, Aug. 15, 1973, unless otherwise noted.

### Subpart A—Introduction

#### §20.1 Scope of regulations.

(a) *In general.*—The regulations contained in this part relate only to the hunting of migratory game birds, and crows.

(b) *Procedural and substantive requirements.*—Migratory game birds may be taken, possessed, transported, shipped, exported, or imported only in accordance with the restrictions, conditions, and requirements contained in this part. Crows may be taken, possessed, transported, exported, or imported only in accordance

with subpart H of this part and the restrictions, conditions, and requirements prescribed in § 20.133.

\* \* \* \* \*

### **Subpart L—Administrative and Miscellaneous Provisions**

\* \* \* \* \*

#### **§ 20.132 Subsistence use in Alaska.**

(a) In Alaska, Eskimos and Indians may take, possess, and transport, in any manner and at any time, auks, auklets,

guillemots, murres, and puffins and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

(b) In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner and at any time, snowy owls and cormorants and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

## **CHAPTER II—NATIONAL MARINE FISHERIES SERVICE**

### **SUBCHAPTER C—MARINE MAMMALS**

#### **PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

##### **Subpart A—General**

- Sec.  
216.1 Purpose and objectives.  
216.2 Definitions.  
216.3 Other laws and regulations.

##### **Subpart B—Moratorium and Prohibitions**

- 216.4 Moratorium.  
216.5 Prohibitions.

##### **Subpart C—Exceptions**

- 216.6 Scope and purpose.  
216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention and related statutes.  
216.8 Same—takings and related acts by state or local government officials or employees.  
216.9 Same—takings and related acts by certain natives.

\* \* \* \* \*

**AUTHORITY:** Title I of the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522. This part applies solely to marine mammals and marine mammal products which are, or consist of, members of the Order Cetacea and members, other than walruses, of the Order Pinnipedia, which are morphologically adapted to the marine environment. For regulations under the aforesaid Act with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

**SOURCE:** 37 F.R. 28177, Dec. 21, 1972, unless otherwise noted.

##### **Subpart A—General**

#### **§ 216.1 Purpose and objectives.**

The following regulations implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals and marine mammal products.

#### **§ 216.2 Definitions.**

Except as otherwise set forth in this section, the definitions in the Act shall apply for purposes of this part.

(a) "Act" shall mean the Marine Mammal Protection Act of 1972, Public Law 92-522, 86 Stat. 1027.

(b) "Authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices, or other improved methods of production utilizing modern implements, such as sewing machines. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted so long as no large scale mass production industry results.

(c) "Commercial fishing operation" shall mean the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

(d) "Endangered species" shall mean a species or subspecies of marine mammal listed as threatened with extinction pursuant to the Endangered Species Conservation Act of 1969.

(e) "Incident catch" shall mean the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a conse-

quence of the steps used to secure the fish in connection with commercial fishing operations: *Provided, however*, That the taking of a marine mammal which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

(f) "Indian, Aleut, or Eskimo" shall mean a citizen of the United States who is one-fourth degree or more American or Alaskan Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any such person either or both of whose adoptive parents do not fall within such definition. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States residing in the State of Alaska who is regarded as being an Indian, Aleut or Eskimo by the native village or town in Alaska of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as being an Indian, Aleut, or Eskimo by any native village or native town in such State. Any citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Indian, Aleut, or Eskimo for purposes of this part.

(g) "Marine environment" shall include estuarine and brackish waters.

(h) "Marine mammal" shall mean those members of the order Cetacea and those members, other than walruses, of the order Pinnipedia, which are morphologically adapted to the marine environment, and includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(i) "Native" shall mean any Indian Aleut, or Eskimo as defined in paragraph (f) of this section, and "Alaskan native" shall mean any such person who is a resident of the State of Alaska.

(j) "Native village or town" shall mean any tribe, band, clan, group, village, community, or association of Alaskan natives in Alaska which the Alaska Native Claims Settlement Act or the Secretary of the Interior finds eligible for land conveyances under subsection 14(a) of that Act.

(k) "Pregnant" as to any marine mammal, shall mean near term. A marine mammal shall be presumed to be pregnant and near term, unless proven otherwise, if, at the time with respect to which such condition is sought to be established, such mammal would customarily have been pregnant and near term by reason of the season of the year, the location of the animal in the migratory pattern, or other relevant circumstances.

(l) "Products from fish" shall include the primary processed products of fish, such as fish meal, fish protein derivatives, or processed fish oil.

(m) "Secretary" shall mean the Secretary of Commerce or his authorized representative.

(n) "Subsistence purposes" shall mean, with respect to any marine mammal, the direct consumption by Alaskan natives of all usable portions of such mammal for food, clothing, shelter, heating, transportation, and the other necessities of life.

(o) "Take" shall mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal, including, without limitation, any of the following: The restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the operation of an aircraft or vessel, or the doing of any other acts, which results in the harassment of a marine mammal.

(p) "Wasteful manner" shall mean the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal, or which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing.

[37 FR 28178, Dec. 21, 1972, as amended at 38 FR 7987, Mar. 27, 1973]

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### Subpart C—Exceptions

#### § 216.6 Scope and purpose.

Notwithstanding the moratorium and prohibitions set forth in Subpart B of this part and the Act, marine mammals may be taken, marine mammals and marine mammal products may be im-

ported into the United States, places subject to the jurisdiction of the United States may be used for such taking and importation, and it shall be lawful to possess, transport, sell, or offer for sale any marine mammal, or transport, sell, or offer for sale any marine mammal product, as and to the extent provided in the regulations in this subpart and the applicable provisions of the Act.

**§ 216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention, and related statutes.**

The Act and the regulations in this part shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking, or importation, of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151-1187, as, in each case, from time to time amended.

\* \* \* \* \*

**§ 216.9 Same—taking and related acts by certain natives.**

(a) Any marine mammal may be taken by any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific

Ocean or the Arctic Ocean in the States of Alaska, Washington, Oregon, or California, and no permit shall be required, if the taking is:

(1) By Alaskan Natives for subsistence purposes of Alaskan Natives, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

In addition, any such Indian, Aleut, or Eskimo, and direct and indirect transferees of such native may, incidental to such taking and disposition, possess and transport such marine mammal or a marine mammal product made therefrom, and use any port, harbor, or other place under the jurisdiction of the United States. No marine mammal taken pursuant to subparagraph (2) of this paragraph may be sold except when transformed into authentic native articles of handicraft and clothing, provided that edible portions of such marine mammal may be sold in Alaskan Native villages and towns or for native consumption so long as, in each case, no interstate commerce is involved.

(b) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

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